

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 18<sup>th</sup> July, 2019

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

*[The Speaker (Hon. Lusaka) in the Chair]*

### PRAYER

### PAPER LAID

REPORT OF THE PERSONS WITH DISABILITIES (AMENDMENT)  
BILL (SENATE BILLS NO. 1 OF 2019)

**Sen. (Dr.) Milgo:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday 18<sup>th</sup> July, 2019:-

Report of the Standing Committee on Labour and Social Welfare on the Persons with Disabilities (Amendment) Bill (Senate Bills No. 1 of 2019).

*(Sen. (Dr.) Milgo laid the document on the Table)*

### NOTICE OF MOTION

RETIREMENT AGE FOR PERSONS WITH DISABILITIES IN  
PUBLIC SERVICE AND IN ACADEMIA

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I beg to give notice of the following Motion -

THAT, AWARE THAT, Persons with Disabilities (PWDs) and their families are among the world's poorest and are disadvantaged in terms of their late entry into the labour-force;

FURTHER AWARE THAT the reality of employing disabled people does not match the presumptions held by employers, and the influence of how they think about disability remains a potent issue for disabled people seeking to work;

COGNIZANT THAT Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) affirms the equal right of all persons with disabilities to live in a community with choices

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equal to others, and with equal access to services and facilities that are responsive to their needs;

NOTING THAT, unlike current trends around the world, employers in Kenya are not incentivized to employ Persons with Disabilities and, therefore, most public organizations and parastatals have not yet achieved the threshold of Article 54(2) of the Kenyan Constitution that obligates 5% appointment of PWDs in elective and appointive positions;

CONCERNED THAT, Article 27(e) of the UNCRPD advocates for party states, of which Kenya is one, to promote employment opportunities and career advancements of PWDs in the labour market as well as assistance in finding, obtaining, maintaining and returning to employment;

NOW THEREFORE; the Senate calls upon the Ministry of Labour and Social Protection and county governments to develop a policy to ensure that:

1. PWDs in gainful employment in public service retire at the age of 65 years instead of 60 years; and,
2. PWDs in academia, such as Universities and colleges retire at the age of 75 years, instead of 70 years.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Before we move to the next Order, I have a communication to make.

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM NABONGO  
JUNIOR ACADEMY, BUNGOMA COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Nabongo Junior Academy, in Bungoma County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I welcome them and wish them a fruitful visit.

I thank you.

*(Applause)*

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, I thank you for giving me this opportunity to welcome the teachers and students from Nabongo Junior Academy. I encourage the students to continue working hard in school. I am sure that they will be great leaders in future, like the Senators here. I congratulate them for coming to the Senate. The Senators are their parents and we shall continue to support them by making sure that they are comfortable in school, and that they are proceeding well in education.

Welcome to the Senate.

**Sen. Ochillo-Ayacko:** Mr. Speaker, Sir, I take this opportunity to join you in welcoming the students who are visiting the Senate. The Senate is a good place to visit, and we hope that they will benefit from this visit by learning what we do here. We have different perspectives to debate here, but we ultimately resolve issues amicably through dialogue for the welfare of Kenyans. As they visit the Senate and learn what we do, I hope that they will take the value of dialogue and debate back to their school. I hope that when they become the leaders tomorrow, they will promote negotiations and compromise as a value to society.

Mr. Speaker, Sir, I welcome the delegation to the Senate.

**The Speaker** (Hon. Lusaka): Sen. Khaniri, you can welcome the delegation on behalf of the Senator for Bungoma County, and then proceed to seek your statement.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. On my own behalf and on behalf of the Senator for Bungoma County, who is my elder brother, Sen. Wetangula, I join you and my fellow Senators in welcoming the students from Bungoma County. They have an active Senator here in the name of Sen. Wetangula, who is one of the longest serving Senators, who attends sittings regularly. I think that he is just attending to other matters, but he will be here in due course. I urge the delegation to feel welcomed. I wish them all the best as they continue with their tour of the Senate and Nairobi County

Mr. Speaker, Sir, I would like to seek the following statement.

## STATEMENTS

### BILLING SCANDAL AT KENYA POWER

Mr. Speaker, Sir, I rise, pursuant to Standing Order 48(1), to seek a statement from the Standing Committee on Energy with regard to the billing scandal at the national power utility company, Kenya Power (KP).

In the Statement, the Committee should -

- (1) Itemize and give justification for the various cause elements billed or levied to prepaid electricity consumers;
- (2) Establish the circumstances that have led to prepaid electricity consumers being billed an element referred to as "Total debt" when purchasing tokens, effective 1<sup>st</sup> July, 2019;
- (3) Outline the action taken by the KP against the employees who orchestrated the fraud;
- (4) State the measures that the KP is putting in place to strengthen their internal checks and accounting system; and,
- (5) Explain what recourse the affected customers have in their quest to recover funds lost in the fraud.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I support the statement by Sen. Khaniri and urge the Committee to look into the issue of prepaid billing. This is a serious scandal and the KP is still making people pay. If you buy tokens for Kshs2,000 for a prepaid account, you only receive tokens worth Kshs1,300, while the balance of Kshs700 goes to other charges. That is about 30 per cent that goes to other charges. Kenyans are already

overtaxed, yet the KP still steals from us. In a home that houses 10 people, you may end up using Kshs20,000 on electricity bill, yet you only use a fridge and lighting. Something has to be done to resolve the issues with the KP.

**Sen. Ochillo-Ayacko:** Mr. Speaker, Sir, I sit in the Committee on Energy, Roads, and Transportation, and I know that this is a very serious matter. Electricity is a necessity. The KP enjoys a monopoly in this country, which requires them to be very respectful to consumers and the public. I believe that the Committee on Energy has to ensure that the public interest is protected.

We must also ensure that the KP does not abuse its position as a monopoly. I, therefore, congratulate my namesake and dear brother, Sen. Khaniri, for bringing this matter to the attention of the Committee. I promise on my behalf – since I do not see my Chair around – and on behalf of the Committee, that we will do the best we can to get to the bottom of this matter.

*(Applause)*

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. This is a live issue. Let me congratulate the Senator of Vihiga for bringing up this Statement. In Kenya, today, if you get a bill, you are not sure whether it is actually your electricity bill or someone else's. We have also had an issue with the wiring of lines, where you find you neighbor has a line that is not necessarily yours. However, the latest scandal has to do with the tokens that we use for electricity. There was a time when these tokens were sold out to people, but it was as though the money had not been used for the electricity, and they were being asked to pay again for those specific tokens. This was all over in the news in Kenya.

Mr. Speaker, Sir, I hope that the Committee on Energy will deal with this issue. They should not just deal with the issue about the billing scandal, but also have an overview of KP and the way they interact with their customers and their responsibilities to the customers.

Thank you, Mr. Speaker, Sir.

**Sen. Mutula Kilonzo Jnr:** Thank you, Mr. Speaker, Sir. It is good to have Sen. (Dr.) Zani back.

*(Laughter)*

Mr. Speaker, Sir, this is a very serious matter, because Kenyans are being exploited. Recently, we had a documentary where Kenyans are being exploited by supermarkets and the KP. Lighting is possibly the most expensive, either in this region or in the world; and everybody is affected.

Mr. Speaker, Sir, even though the Statement by Sen. Khaniri is on a particular aspect, I think that as a Parliament, we have to start finding a method about consumer protection in Kenya. This is because what is happening by what Sen. Khaniri's Statement seeks to address, and the people who have been exploited by the supermarkets, is as a result of lack of consumer protection legislation. Mr. Apollo Mboya fought for Kenyans on the KP billing and he was vilified on Twitter. Eventually, he was vindicated in our courts, but it did not help.

Mr. Speaker, Sir, I am still waiting for the Committee on Energy to tell us how somebody was recently siphoning fuel in Mlolongo, because the loss is ultimately passed

on to us, ordinary taxpayers. Therefore, the docket Committee which is going to interrogate this matter is full. It would help Kenyans to find a regulatory framework to deal with the monopoly called KP. If there was a way we can kill that monopoly, then we must kill it. They have turned out to be the worst disaster of monopolies in this county.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I also rise to support this Statement and congratulate Sen. Khaniri for seeking it. The issue of utilities and being ripped off by the utility companies is becoming a matter of concern. As you know, some of these utilities are a matter of survival for a lot of people, especially the elderly, Persons with Disabilities (PwDs), children and perhaps people who are more vulnerable to---

*(Applause)*

We need to look at this deeply, as a House, including the issues that have been mentioned by other Senators on legislation to protect consumers when it comes to these utilities. These utility companies need to be regulated.

Mr. Speaker, Sir, We also have to look at the issue of affordability of these utilities. For instance, you will find that even for those on postpaid, you will find that you have been charged something that looks like a factory bill for one month. Consequently, in the next three months, they say that you do not have anything to pay. We, therefore, do not know whether these companies have got systems that are based on actual electricity consumption or not. You will notice that most of the pre-paid customers tend to be in the informal settlements and, therefore, this needs to be looked at very closely.

Mr. Speaker, Sir, I am informed that water is even worse. I do not know whether we should look at all this together, but in terms the affordability, quality and the fact that nobody seems to be regulating them is becoming a big problem. We hope that certain private utility companies will come up and be licensed. Perhaps this House should make sure that we legislate around ensuring that the private sector also gets involved in utility service provision so that the monopoly is broken.

With those few remarks, Mr. Speaker, Sir, I beg to support and look forward to seeing how this will be implemented.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to also speak about this very important issue, which is bedeviling the economy of Kenya.

Mr. Speaker, Sir, KP is a notorious monopolist and it, indeed, exhibits bad manners of monopoly in that they exploit the consumers economically. Some legal framework needs to be put in place to seriously regulate this uncanny behavior. Some of the economic pursuits should include -

- (1) Put legal frameworks.
- (2) Introduce competitors or other players in the economy in the energy sector so that we will be in a position to have some kind of oligopolistic formations.
- (3) Introduce some taxes which will be punitive to control the super or abnormal profits.

I appreciate there is a danger of what we call the incidence of tax, which is passing the burden of tax from the monopoly to taxpayers, but as long as there are legal regulations, there will be no problem.

The other problem which is associated with the KP is within the public domain, where consumer protection agencies in this country are not very active, unlike in developed economies. We, therefore, need to have forensic audit on the KP in order to unearth the magnitude of the rot in this company. We are also aware that the procurement laws were put in place sometimes in the last 10 years. However, it is again within public domain that the transformers which were procured at that time were defective. That is why we are usually given a raw deal in the supply of power, which is not constant. Any time there is default in payment for power consumed, the KP using their ‘Rabbit Response Unit,’ are known to rush in to disconnect the power. However, they do not exhibit the same efficiency to ameliorate the customers cry during blackouts. Lastly, they are known to collude with certain customers to freeze the KP.

In summary, Mr. Speaker, Sir, there is a problem with company. It is high time that the relevant Committee – in which Sen. Ochillo-Ayacko, among others sits in – need to come up with a comprehensive analysis as to the problems and also the way forward.

Mr. Speaker, Sir, we are saying that it is a requirement under the National Environmental Management Authority (NEMA) regime that people doing construction are supposed to put up solar systems. That way they will be in a position to fight the deficit in the KP.

I beg to support.

**The Speaker** (Hon. Lusaka): I see a lot of interest, and so I will limit those who are contributing to two minutes.

Proceed, Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for this opportunity. I join my colleagues in supporting the Statement by Sen. Khaniri. I will limit myself to two points. One, I urge the Committee to which this Statement will be directed to, to make the first call at the Competition Authority of Kenya, and find out the regulations that exist for this monopoly called the KP. KP is a monopoly that has created a lot of confusion within the energy industry. There are so many sub-agencies operating under the KP, that when you have a problem, it has become difficult to know where exactly to go.

Mr. Speaker, Sir, it is not very clear who owns the imported transformers that my brother, Sen. (Dr.) Kabaka, talked about. Do they belong to the Kenya Electricity Transmission Company (KETRACO), the KP or the Rural Electrification Authority and Renewable Energy Corporation? There are so many agencies operating around the KP, and it is in the best interest of power consumers to know where to take the blame when it arises. Initially, there was what was called the Independent Power Producers (IPPs), who operated in the country for a few years. However, they were also found to have been fleecing consumers in a way. Maybe it is time that this country needs to have a conversation around the issue of establishing new plants---

*(Sen. Wambua’s microphone went off)*

**The Speaker** (Hon. Lusaka): Order, you need to know how to manage your two minutes.

*(Laughter)*

Proceed, Sen. Nyamunga.

**Sen. Nyamunga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to support the Statement that has been made by our senior, Sen. Khaniri. This is a very serious matter. I am surprised that Kenya, as a nation, steals from its people. When the prepaid tokens were introduced, it was meant for the low cadre of the society. It is, therefore, unfortunate that we can use the same techniques to steal from our people. If we are stealing tokens from Kenyans, knowing that they belong to the lowest cadre, it is criminal. Secondly, since this thing happened, we have not heard anything; nobody has spoken. We have heard nothing from the KP, telling us what they are doing about the stealing of tokens from our people.

Mr. Speaker, Sir, it is also unfortunate that we are talking of industrialization of our country, yet we know very well that we are not good with electricity. The electricity bills are very high in Kenya and, apart from that, it is always on and off. I remember when I was the women representative, I was in poultry farming. I wanted to help the women to do poultry farming. However, most of the time, we were losing our eggs because of the KP. The power would go off all the time, sometimes for three or four hours. It was also unaffordable, which made us to stop the poultry farming. We know very well that the chicken and eggs we eat in Kenya do not come from Kenya. We kill our industries and support other people's industries, and we want to tell Kenyans that we want to industrialise and to be counted, come year 2030. I do not know how we intend to meet some of these obligations.

Mr. Speaker, Sir, I ask the Chair and Members of this Committee to they do a comprehensive report within two weeks. This is because further than that, it will not be productive for this House and the people of Kenya.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to contribute. What people do not understand about energy in terms of electrical power, is that we need it to have sustainable economy. Since manufacturing is part of President Uhuru's Big Four Agenda, it will not be realised unless the issue of electricity is addressed conclusively.

Mr. Speaker, Sir, my other observation is that in this region, we produce the most expensive things because of electricity. In my own county of Wajir, if we made the cost of electricity reasonable, we will be able to produce enough food to feed the whole of this country, because we have the land.

Finally, we should not miss the fact that there is enough legislation to deal with people who are stealing from us. These people have been stealing from Kenyans; let us call a spade a spade and deal with this issue as a crime.

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir. The issue of electricity tokens has reached a level where we feel that the haves are stealing from the very poor people. The Last Mile Connectivity Project was meant to bring joy and pleasantness to the homes of people, so that our learners could study in a very congenial environment. Unfortunately, the designers of these tokens did not foresee a situation where we are now seeing people stealing those tokens and not providing the necessary electrical power or light, because it was meant for the poor families. Already, the ones who are on heavy tariffs have been swindled left, right and centre, and I have been one of the victims.

Mr. Speaker, Sir, I tried to set up a small industry within my farm, and the electricity bill was going to Kshs200,000. However, when one looked at the units we were using, they were nowhere near the kind of figures we were receiving. If I did not relentlessly pursue that matter, I would have been in a fix. Eventually, the bill came down from Kshs200,000 to Kshs46,000. How much more pain would that be for an ordinary Kenyan citizen, who wants lighting in the house so that children can do their homework in the evening?

That is a form of stealing of intellectual capacity from our people, who need to be empowered to do enough schooling and simple tasks unhindered. I, therefore, fully support Sen. Khaniri for bringing this Statement to the Floor of this House---

*(Sen. (Prof.) Onger's microphone went off)*

**The Speaker** (Hon. Lusaka): Order, Sen. (Prof.) Onger. Your time is up. Proceed, Sen. (Rev.) Waqo.

**Sen. (Rev.) Waqo:** Mr. Speaker, Sir, I have a small factory in Kitengela, where we do some production. We recently went through this similar problem because the KP exaggerated our bill. The KP has been doing this to our citizens, and tough measures have to be taken against the company. As one of the Senators, I suggest that all the people concerned, from the top to the bottom – because the people in charge do that on behalf of their bosses – should be dealt with properly, because it is a criminal case.

Mr. Speaker, Sir, I beg to support the Statement by Sen. Khaniri.

**Sen. Olekina:** Asante sana, Bw. Spika, kwa kunipa nafasi hii ili nichangie “Mswada” huu kuhusu shida ambayo Wakenya wanapitia kufuatia malipo ya stima.

*(Laughter)*

Bw. Spika, hii ni shida ambayo italeta ---

**The Speaker** (Hon. Lusaka): Order, Sen. Olekina. What is your point of order, Sen. Omogeni?

*(Loud consultations)*

**Sen. Omogeni:** Bw. Spika, nimeskia Seneta mwenzangu kutoka Kaunti ya Narok akisema kwamba yeye anachangia Mswada. Hakuna Mswada, ila tunachangia Taarifa ambayo imeombwa na Sen. Khaniri wa Kaunti ya Vihiga. Kwa hivyo, nataka kumweleza kuwa tunajadili taarifa sio Mswada.

**The Speaker** (Hon. Lusaka): Natoa tangazo, kuwa msitupeleke mahali ambapo mlitupeleka jana. Tafadhali, kama huwezi kujieleza vyema kwa Kiswahili, naomba uzungumze kwa Lugha ya Kiingereza.

What is your point of order, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr:** Asante, Bw. Spika. Nafikiri ulikuwa unatoa onyo, sio tangazo.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Tangazo pia laweza kuwa ni onyo.

What is your point of order, Sen. Pareno?

**Sen. Pareno:** Mheshimiwa Spika, ningeomba kumjulisha mwenzangu kwamba hatulipi stima, tunalipia matumizi ya umeme. Hapo awali, alieleza kwamba tunalipa stima.

*(Laughter)*

**Sen. Olekina:** Bw. Spika, kwanza kabisa, nashukuru kwa kukosolewa. Ni lazima Wakenya waelewe shida ambayo tunajaribu kutatua hapa.

Bw. Spika, kama wanachama wa Kamati ya Kawi, tutajitolea na kuhakisha kwamba tumefuatilia jambo hili, kwa sababu Wakenya wengi wanaumia. Zile *bills* ambazo Wakenya wanapata---

Bw. Spika, ukipata taarifa ya matumizi unaona ya kwamba---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. (Dr.) Kabaka?

**Sen. (Dr.) Kabaka:** Mr. Speaker Sir, the Standing Orders are very clear that there only two languages; either Kiswahili or English, and not Sheng.

*(Laughter)*

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Sen. Kabaka! You started in English and you should not contradict yourself.

**Sen. (Dr.) Kabaka:** All of you are missing the point here. My point is the language here. You cannot speak in Kiswahili and Sheng. There is a difference between referring to a subject using two languages at the same time; not *Sheng. Shida yangu ni Sheng.*

**Sen. Dullo:** Mr. Speaker, Sir, our Standing Orders are very clear, that if you start with Swahili, you must finish in Swahili. Some of the Senators are mixing the two languages. They have to adhere to that Standing Order.

Thank you.

**The Speaker** (Hon. Lusaka): Order, hon. Members. That is the caution I gave. If you are not sure of what you want to communicate in a particular language, pick a language that you are familiar with so that we do not waste time.

Proceed, Sen. Olekina.

**Sen. Olekina:** Mheshimiwa Spika, nashukuru kwa kunipa nafasi hii ili niweze kuchangia Taarifa ya mwenzangu, Sen. Khaniri, kuhusu matumizi ya stima katika nchi hii. Shida ambayo tunapata, kama Wakenya, ni kwamba kuna kampuni ambapo ufisadi umekita mizizi. Hali hii imekithiri hadi kiasi kwamba wafanyikazi katika kampuni hizi wanatafuta namna za kuwaibia na kuwahangaisha Wakenya.

Bw. Spika, Kama Bunge, tunapaswa kusimama imara ili tutatue shida hii. Shida hii haiwezi kutatuliwa iwapo tutasema kuwa ni Kamati tu inaweza kuiangalia. Hii ni shida ambayo itatuhitaji sote, Maseneta 68 tunaosimamia Kenya nzima. Tunafaa tuketi

pamoja na kujadiliana iwapo ni sheria tutabadilisha ili tuweze kumaliza *monopoly* inayoendelezwa na kampuni ya kusambaza umeme.

*(Laughter)*

Bw. Spika, hilo ndilo swala tunalostahili kujadiliana kwa sasa ili tuweze kujua kama Kaunti ya Narok kuna kampuni ambayo inaweza kuzalisha kawi na kuusambaza huko. Hii itasaidia kumaliza *monopoly* na kuwasaidia Wakenya wetu. Lakini jinsi tunavyoendelea sasa, hatuwezi kuwasaidia Wakenya.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I heard you announce that there is a school from my County. I, therefore, join you in welcoming them, although you may have passed that agenda.

Mr. Speaker, Sir, the Statement by Sen. Khaniri from Vihiga touches me in a personal way. I have a personal testimony that has caused pain to my family and I. The KP has consistently, every single month, come to my residence, disconnect power from the pole and then disappear. Three months ago, the KP sat with one of the personal assistants, and came up with a spurious figure of Kshs430,000 for them to change my account from postpaid metering to a pre-paid one. I asked the young man what the problem was, and he said that the swimming pool was consuming power. I said that, that was not a hotel, and the swimming pool runs once a week. They disconnected my power and to get the connection back, I had to pay.

Two months later, the KP handed over a bill of Kshs526,000, and told me that they were going to disconnect power unless I paid. This is before they had even given me the pre-paid meters. Therefore, what Sen. Khaniri is talking about is not just an isolated case, as I know there are many other people who have suffered more than I have.

A staff of this House has just reported to me that when they attempted to pay their electricity bills recently through a cheque, the KP declined and demanded for cash. This is happening when everybody is moving away from cash transactions to electronic payments. As we sit in this House, there is nobody more than myself and Sen. Ochillo-Ayacko, who have interacted with the KP. This is because I was the first regulator of electricity in this country, while Sen. Ochillo-Ayacko has been the Minister for Energy.

Mr. Speaker, Sir, if this House has to protect Kenyans, we must rein in on the cartels that run the KP. This is because you cannot, as a private residence – and even if you run a factory, which I do not – pay a bill of Ksh526, 000 to the KP. When you do not pay, they disconnect you from the pole and because you are helpless, you then have to pay because they leave you and your family in limbo and darkness. Whenever they do that, it destroys every single electronic gadget in your house. Any food in the fridge is destroyed and they never compensate anybody for these malpractices.

Mr. Speaker, Sir, I urge the Committee – my brother, Sen. Ochillo-Ayacko, and Sen. (Eng.) Maina, whom I am told is away in China – to, please, look into this matter. Whenever you sit to look at it, invite me, because I want to come and give my testimony to you.

*(Interruption of debate on Statements)*

**The Speaker** (Hon. Lusaka): Hon. Senators, I have a communication to make.

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KILIMO PRIMARY  
SCHOOL, NAKURU COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Kilimo Primary School, Nakuru County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

Hon. Senators, we have to move to the next Statement because of time.

*(Resumption of Statements)*

ELECTION OF SEN. (REV.) WAQO AS CHAIRPERSON OF THE COMMITTEE ON NATIONAL  
COHESION, EQUAL OPPORTUNITY  
AND REGIONAL INTEGRATION

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order 47(1), I rise to make a Statement on an issue of national concern. This is the election of Sen. (Rev.) Waqo as the Chairperson of the Committee on National Cohesion, Equal Opportunity and Regional Integration.

*(Applause)*

Mr. Speaker, Sir, I wish to convey my heartfelt congratulations to Sen. (Rev.) Waqo, on her election. The major milestone for the Senate under the Twelfth Parliament is that Sen. (Rev.) Waqo became the first female Chairperson of a Standing Committee in the current Senate; and the second one following the re-introduction of the Senate in 2013.

As the Senate may be aware, nominated Sen. Mvita Mshenga was the first female Senator to be elected as a Chairperson of a Committee in the Senate, during the Eleventh Parliament. She was elected as the Chairperson of the Committee on Delegated Legislation. Therefore, Sen. (Rev.) Waqo is still the first female Senator to be nominated in a Standing Committee, because the other one is a Sessional Committee.

**The Speaker** (Hon. Lusaka): I see a lot of interest.

**Sen. Kihika:** Thank you, Mr. Speaker, Sir. I also join you in welcoming the students and teachers from Kilimo Primary School, which is right in Egerton University, in Njoro, Nakuru County. This is a school that performs very well, and I am glad they have visited Parliament, more specifically the Senate. I hope that the students have learnt a lot, and that they will pick up something and take it back with them. I am sure it will be

helpful. I also hope that as they continue with their studies, they will do well and succeed in their lives.

Mr. Speaker, Sir, I also join Sen. Farhiya in congratulating Sen. (Rev.) Waqo for being elected as the first lady Chairperson of a Committee in this Senate Session. I know that Sen. (Rev.) Waqo is up to the task. As women in this Senate, we are glad that we are seriously cracking the glass ceiling in that Committee on Liaison, which has become a boys' club. I hope that as we move along, more ladies will chair Committees in this Senate.

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir.

*(Sen. Cheruiyot consulted loudly)*

Mr. Speaker, Sir, I need to be saved from my own student, Sen. Cheruiyot.

Thank you, Mr. Speaker, Sir, for giving me an opportunity to congratulate my sister, Sen. (Rev.) Waqo, for the nomination to be the Chairperson of a Committee. I do not just congratulate her, but also the male colleagues in that Committee for doing what is right, and what should be done. We are not congratulating her because this is something new or trying to do, but the thing that we should have done from the beginning.

Mr. Speaker, Sir, we have violated the Constitution in this House. The Committee on Liaison does not meet the 30 per cent rule.

**An hon. Senator:** Yes!

*(Laughter)*

For that reason---

*(Sen. Olekina approached the Chair)*

Mr. Speaker, Sir I urge the Senator for Narok County not to interfere with you, because I want you to know, as I had said---

**Sen. Malalah:** On a point of order, Mr. Speaker, Sir. This issue of the one-third gender rule is one that we need to address more seriously. Is it in order for the hon. Member to insinuate that the Committee on Liaison is not well constituted?

**Hon. Senators:** Yes!

**Sen. Malalah:** It is like saying that the Harambee Stars does not meet the threshold. There are other institutions which require one gender.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Sen. Malalah!

Sen. (Prof.) Kamar, proceed. That was just a light moment.

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir. I was getting surprised at what the Sen. Malalah was saying, because our Constitution is very clear. It is our responsibility to read the Constitution. We know that the Constitution states clearly that for all elective and appointive positions, we must obey the one-third rule.

As I said earlier, we have had a very dangerous trend in this House, where our committees are chaired by male colleagues. It is dangerous because there was a forum in Washington, where the Senator for Nairobi was leading a women's delegation. As he did that, I am reliably informed that there were sessions that he was not very comfortable about. It is very important that---

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. It is extremely irresponsible for the Senator for Uasin Gishu County to claim, on the Floor of this House, that there was any session I was not comfortable leading the Delegation to the Commission for the Status of Women (CSW). We believe in 'he' for 'she' and that on issues of gender, men and women must be front and centre.

Mr. Speaker, Sir, our Standing Orders are very clear. The Senator should, therefore, either substantiate or withdraw that statement. Our support for women, as men in this House, should not be taken lightly. That is a very dangerous statement she has just made. Kindly let her substantiate which session at CSW I was not comfortable with, or withdraw and apologise according to our Standing Orders.

**Sen. (Prof.) Kamar:** Mr. Speaker, Sir, I am happy that he has said that he was very comfortable. I leave it at that, that he was very comfortable with every Committee, because I said I was reliably informed by a Member of the Committee.

**Sen. Ochillo-Ayacko:** On a point of order, Mr. Speaker, Sir. I get concerned and apprehensive when Sen. (Prof.) Kamar talks about sessions of women where men are uncomfortable. That is alarming. Would I be in order to request her to advise the Senate what sort of session where men would be uncomfortable discussing matters of importance? This is very alarming.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, what is your point of order, before Sen. (Prof.) Kamar responds?

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. This is a House of record. If the Senator is unable to substantiate according to our Standing Orders, she needs to withdraw and apologise for that insinuation. There is no session where I was uncomfortable. In fact, I attended all the sessions. I was on the panel for three of the sessions, including one led by Sen. Kihika, as the President of the Inter-Parliamentary Union (IPU) Women's League.

Mr. Speaker, Sir, this is an affront on us, male Members, who for years have stuck our necks out supporting the women agenda. We cannot be intimidated to stop supporting women in this House.

**Sen. Wetangula:** Mr. Speaker, Sir, while my nephew is justified to protest in defence of Sen. (Prof.) Kamar, in keeping with our Standing Orders, I think she was careful not to make a statement of fact. She simply said that she was reliably informed. If the information was incorrect, let the chips fall where they may, and bring the matter to an end.

I would like my distinguished nephew to know that he has not, in any way, been subjected to ridicule, because she did not make a statement of fact. She said that she was reliably informed. The information could have been wrong, but we should let it lie there.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, will I be in order to indicate that what Sen. (Prof.) Kamar stated here is her opinion? She was making a contribution, and that is what she perceived to be. When we make contributions, we express our opinions.

**The Speaker** (Hon. Lusaka): What is it, Sen. Sakaja?

**Sen. Sakaja:** Mr. Speaker, Sir, I am surprised that my distinguished uncle, who has been in this House since I was in Standard Two, does not know our Standing Orders.

*(Laughter)*

Mr. Speaker, Sir, we should be careful when discussing our colleagues, because there are provisions about implying improper motives on a colleague. Even if it might not have been a statement of fact, there are implications of saying, “She was reliably informed that there are certain sessions regarding women that a colleague of mine was uncomfortable with.” Such is not allowed under our Standing Orders. She should, therefore, withdraw or substantiate, by informing this House the reliability of that information, because that is in bad faith.

**The Speaker** (Hon. Lusaka): Hon. Senators, I did not hear what Sen. (Prof.) Kamar said. I will, therefore, go through the HANSARD. Once I am satisfied that she needs to withdraw and apologise, I will direct so, next week on Tuesday.

**Sen. Wetangula:** Mr. Speaker, Sir, before we even get there, Sen. (Prof.) Kamar said that “She was reliably informed that a Senator for Nairobi City County led a delegation of women to New York.” Since this Senate started, we have had two Senators for Nairobi; Sen. Mbuvi, who is now a Governor, and my distinguished nephew. She never said the year when the delegation was led. We do not know whether it was the previous or the current Senator

I still defend Sen. (Prof.) Kamar, that she has not in any way flouted the Standing Orders. This is because she simply gave information, as she received it. If it is incorrect, then it lies there.

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, I have made ruling on that, and I hope you will not take us back.

**Sen. Sakaja:** Mr. Speaker Sir, you have made a ruling. However, we must respect each other in this House. There could be the former Senator, but there is only one Senator for Nairobi. We all know that the former Senator never led any delegation anywhere. We are a House of rules, and there is a reason why this provision has stayed in our Standing Order since the beginning of Parliament.

Mr. Speaker, Sir, Standing Order 96(4) states that:-

“No Senator shall impute improper motive to any other Senator or to a Member of the National Assembly except upon a specific substantive Motion of which at least three days’ notice has been given, calling in question the conduct of that Senator or Member of the Assembly.”

*(Loud consultations)*

*(Sen. Murkomen walked into the Chamber)*

**The Speaker** (Hon. Lusaka): Order, hon. Members! Senate Majority Leader, you need to settle down and find out what is going on.

Proceed, Sen. Sakaja.

**Sen. Sakaja:** Mr. Speaker, Sir, this should not be taken lightly. If I stand up and say, “I am reliably informed that a specific Senator is a thief;” that is imputing improper motives. That is as clear as day and night.

Mr. Speaker, Sir, I know that you want to consult the HANSARD, but the Senator has actually admitted that she was reliably informed. Therefore, let us stick to our rules or throw them out of the window. That is not fair.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, I have made a ruling, and I will stand by what I have said.

Proceed, Sen. (Prof.) Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir, for giving direction. I did not intend to impute an improper motive on a colleague, because I was just passing information.

Mr. Speaker, Sir, our Standing Orders and the Constitution are very clear on the one-third gender rule. Since we have that provision, I appeal to our male colleagues that when there is a turnaround in the election of Chairpersons of the Committees, we should follow the example of a Committee that elected our colleague, Sen. (Rev.) Waqo, yesterday to be the Chairperson of the Committee.

With those few remarks, Mr. Speaker, Sir, I thank you.

**Sen. Malalah:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Malalah? You look annoyed even before you start talking.

**Sen. Malalah:** Mr. Speaker, Sir, I am sorry to take you back, but I am still surprised. How did Sen. Sakaja lead a delegation of women to a women conference? We need to ascertain that, because as far as I am concerned, Sen. Sakaja is a man. How can he lead a delegation of women?

**The Speaker** (Hon. Lusaka): Order, Sen. Malalah!

Hon. Senators, remember that the whole world is watching us. Therefore, let us focus on serious things. We do not want to turn out to be a House that discusses trivialities. Let us focus on real issues and make progress.

**Sen. Ndwiga:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to add my voice in congratulating Sen. (Rev.) Waqo for being elected as the Chairperson of the Committee on National Cohesion, Equal Opportunity and Regional Integration. Sen. (Rev.) Waqo is also a Member of the Committee on Agriculture, Livestock and Fisheries, which I chair; and I know that she is committed. If she takes the same commitment to the Committee on National Cohesion, Equal Opportunity and Regional Integration, I am very sure that that Committee will have a very dynamic Chairperson.

I also agree with my colleagues, that we need a few more female Chairpersons.

*(Applause)*

In as much as they do not want to chair the Committee on Agriculture, Livestock and Fisheries, we need a few more ladies to chair committees.

Mr. Speaker, Sir, I want to assure Members of the Committee on National Cohesion, Equal Opportunity and Regional Integration that they have a very dynamic

Chairperson. Those of us who have worked with her in the Committee on Agriculture, Livestock and Fisheries know of her dynamism.

**The Speaker** (Hon. Lusaka): Hon. Senators, I have another communication to make.

*(Interruption of debate on the Statement)*

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATIONS FROM VARIOUS SCHOOLS

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from:-

- (1) Uhuru High school in Baringo County; and,
- (2) Ngiluni Primary School in Makueni County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

*(Resumption of Statements)*

Hon. Senators, I want to rearrange the Order Paper. I will defer the Order on Statements. We shall come back to it.

Let us proceed to Order No.8.

### STATEMENTS

#### INCREASED CASES OF ROAD TRAFFIC ACCIDENTS INVOLVING MOTORCYCLES (BODA BODA) ON KENYAN ROADS

*(Statement deferred)*

#### RECOGNITION OF PERSONS LIVING WITH DISABILITIES WHO HAVE BROUGHT HONOUR TO THE COUNTRY

*(Statement deferred)*

#### INCORPORATION OF DRAMA AND OTHER CO-CURRICULAR ACTIVITIES IN THE EDUCATION CURRICULUM IN THE COUNTRY

*(Statement deferred)*

#### THE ACTIVITIES OF THE COMMITTEE ON ROADS AND TRANSPORTATION

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*(Statement deferred)*

BUSINESS FOR THE WEEK COMMENCING TUESDAY, 23<sup>RD</sup> JULY, 2019

*(Statement deferred)*

Next Order.

### PROCEDURAL MOTION

#### REDUCTION OF PUBLICATION PERIOD IN RESPECT OF THE DIVISION OF REVENUE BILL (SENATE BILLS NO. 13 OF 2019)

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, Pursuant to Standing Order 134 of the Senate Standing Orders, this House resolves to reduce the publication period in respect of The Division of Revenue Bill (Senate Bills No. 13 of 2019), from Seven (7) days to One (1) day.

Mr. Speaker, Sir, this is a Procedural Motion, which means that it does not require the usual threshold of 24 delegations. Nevertheless, it is important because of the subject matter that we are dealing with, which is The Division of Revenue Bill (Senate Bills No.13 of 2019).

Mr. Speaker, Sir, the Standing Orders require that when a Bill is published and read a First Time in the House, it must wait for at least seven days before the Second Reading. The Standing Orders also require that the publication period can be reduced through a resolution of the House. Therefore, this Motion is requesting the august House to make a decision that will reduce the publication period of this Bill from seven days to one day. That will make it possible for us to debate, deliberate and pass this Bill.

Mr. Speaker, Sir, I request this House that when the Bill will back on Tuesday, next week, to deliberate it for the Second Reading, Third Reading and complete it. In fact, we will not have any other responsibility, except that of deliberating on this important Bill and passing it. As we all know, The Division of Revenue Bill that came from the National Assembly was deliberated by both Houses. We had a Mediation Committee, which did a fantastic job to negotiate for the right resources that are supposed to go to our counties.

Mr. Speaker, Sir, this is a historical day. Therefore, it is important to deliberate on these issues on such an important and historic day. Permit me to start by congratulating you for leading this important House to finding solutions to the madness that has been witnessed for six years, on the matter of deliberating and passing of Bills.

*(Applause)*

Mr. Speaker, Sir, you led us with a lot of vigor, confidence, courage and gusto, as Sen. Wetangula, says. You led us the way a serious defender of the Constitution of Kenya

should do. We are not going to the merits. I have confidence that we took our issues to the right forum, and that at the right time, we will find a solution. I congratulate the competitor, Sen. James Orengo, the Senate Minority Leader, and yours truly, the third Petitioner. This is because as a team, we will provide a permanent solution in the country.

Mr. Speaker, Sir, I also congratulate the Justice, Legal Affairs and Human Rights Committee. The Chairperson of the Committee, who is my former student, has demonstrated that I taught him well. He has provided the right leadership in his Committee. I also thank all the Members of the Committee.

Mr. Speaker, Sir, I have a special mention for Sen. Mutula Kilonzo Jnr., for his dedication and commitment in the process. I am not saying that the others are not committed. However, he was at the forefront in dealing with many other issues that we wanted to be dealt with, in that Committee. I also thank Sen. Orengo for leading the team of 15 senior and qualified lawyers in this House, and advocates of the High Court of Kenya today. This is the only House that has three Senior Counsels, and we will soon have four or five. This House is self resourced. We have agreed with the Senate Minority Leader that we will bring a suggestion to the Senate Business Committee (SBC), that we do not need to hire other lawyers. The lawyers in this House are enough to do an excellent *pro bono* job to defend this House, both on the Floor and outside it.

I also thank all the Senators for being at the premises of Parliament by seven in the morning. They woke themselves up, saying that this is the day. As Sen. Wetangula has said, the case that we filed today---

Mr. Speaker, Sir, Sen. (Dr.) Musuruve, was amongst the first people to be here. Despite the fact that she walks in crutches, she was among those that walked from here to the Milimani Courts. As Sen. Wetangula said, "this is the case;" because it is the one that will be beneficial to the people of Kenya. Therefore, we should come back to this Chamber to deliberate on the resources that we want to take to the counties.

Mr. Speaker, Sir, I am proud that the Chairperson of the Committee on Finance, Commerce and Budget has published a Bill. This Bill is well thought out and advised by a Constitutional body, whose responsibility is to discuss how equitable resources will be shared, according to Articles 202 and 203 of the Constitution. The Kshs335 billion that should go to counties is well thought out, and it is the amount we believe should go to the counties. I will speak about this next week. It is important to tell the nation, as Sen. Orengo mentioned in court today.

Mr. Speaker, Sir, I also did the same this week, when I had a debate with another person who did not understand the Constitution. It is important to read Article 202 of the Constitution and understand what we mean, when we say that there shall be equitable division of resources between the national Government and county governments. It is because the national Government does not have resources to appropriate for itself. It is Parliament that must sit down and decide how to divide the taxes that have been collected, according to the Constitution, to the two levels of Government.

Mr. Speaker, Sir, it is wrong for one level of Government to arrogate itself the responsibility of dividing resources, which they do not have. It is until Parliament has passed The Division of Revenue Bill, which we are debating now, that the two levels of Government – once they have the resources that have been divided by Parliament – can sit down and appropriate the resources at both levels of Government.

Mr. Speaker, Sir, permit me to read Article 6(2) of the Constitution, because many people treat county governments as if they are appendages of the national Government. I have read it over and over. It states that:-

“The Governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”

None shall look down upon any other level of Government and try to lecture it on how they will run their affairs. They must appreciate that they are all governed under the law. When it comes to the division of revenue, they all depend on Parliament to give them the resources they will expend for the people of Kenya.

Therefore, Mr. Speaker, Sir, the right position was said by one public officer, Mr. Nyamunga, and copied to this House. We will observe how the state will treat him. If they mistreat him for mentioning the right position of the Constitution, we will treat it as a gross violation of the Constitution. The consequences of gross violation of the Constitution will ensue.

*[The Speaker (Hon. Lusaka) left the Chair]*

*[The Temporary Speaker (Sen. Nyamunga) in the Chair]*

Madam Temporary Speaker, we must protect Kenyans who are defending this constitution. We must respect those who are saying that resources must be allocated in the right manner. I will say, for the umpteenth time, that there was no Appropriation Bill that was passed by Parliament. That Bill is null and void. We cannot continue debating that there is money that is supposed to be given to Senate. The Senate deserves, as a matter of right, resources to carry out its functions. It is not a token. We are not borrowing.

Someone should not think that he will bribe the Senate with its rightful resources so as to stop us from performing our responsibility of defending the counties and making sure they are resourced. If someone thinks that the oversight fund is the basis under which we will be stopped from fighting for the resources of the counties, they can take that money and we can put it to resourcing hospitals in this Republic. They must know that we are not begging. We are not asking for those resources so that we can be silenced. No one can silence the Senate. The Senate of the Republic of Kenya is alive, and it will carry out its responsibilities with commitment.

Madam Temporary Speaker, allow me to say that I was very proud of all the Senators today for the way we walked and sat together. I was proud of the way over 50 of us showed up, and the way those of us who are lawyers were robed. Sen. Madzayo, who is a former judge, was leading the way. We are very happy and very proud. I do not want to be too excited to say too much. However, today is the day to say that, as a Senate, let us shorten the time so that we can come back on Tuesday, and spend the whole day. If we are not able to complete it by 6.30 p.m., we shall make sure that we stay up to midnight. This is to ensure that we complete The Division of Revenue Bill and discharge our responsibility; transmit the Bill as required by the Constitution to the National Assembly,

and expect that the National Assembly will perform its responsibility to ensure that our counties are resourced.

Lastly, Madam Temporary Speaker, I have seen two arguments being made out there that are very erroneous. I hope that the media and the country is listening. I hate this idea that every time we raise constitutional matters, like the ones we raised today or we fight for resources to go to counties, it is cheapened by the media and debators out there. It is reduced to such a constitutional debate that is so important about division of revenue. It is reduced to an argument about supremacy, of which is an important House and which is not. This issue is more important than who is bigger and stronger, or which is the Upper or the Lower House. Therefore, I hope that our debators, policy makers, and the media out there will locate the right position that they should put in this debate. I hope that they realize that the Senate is pursuing a higher ideal, which is higher than the question of which is the Upper or Lower House, because it is about taking resources to the counties.

People must congratulate and appreciate the Senate. Ninety per cent of Senators here do not agree with their governors on how they are managing resources in their counties. They do not agree, as some of them are not in the same political parties as their governors. But we are mature enough to separate our disagreements with governors and the desire of the counties to be properly resourced. We are mature enough to appreciate that resources must first go to the counties before we discuss whether those resources are being used well or not.

Madam Temporary Speaker, they do not agree the question of management of resources is a different debate that affects both the national and county governments. We have to first resource the counties properly before we can say they are unable to deliver resources or they are unable to oversight the resources. The Senate must be congratulated for fighting for resources to go to our counties, despite the fact that we have concerns about the management of these resources, and the fact that we are politically in disagreement with most of our governors. That is the proper definition of maturity.

Madam Temporary Speaker, I would like to move and request the Senate Minority Leader, who is a Senior Counsel and also Petitioner Number 4 in the very important Petition.

*(An hon. Senator spoke off record)*

Is it Number 2? No, he is Petitioner Number 4 in this very important Petition, which is otherwise known as *The Case*.

Madam Temporary Speaker, I beg to move and invite Sen. Orengo to proceed from there.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I will be very brief. I also take this opportunity to congratulate the Speaker for leading the House when we went to file the case that we all know about. I also congratulate my brother, Sen. Murkomen, the Senate Majority Leader, because he has been very passionate about the powers and integrity of the Senate, as a House. I congratulate us all, because this morning when we appeared in court, there was supposed to be another case presided over by three Judges. The Judge decided that before he can touch any other case, he had to deal with the case involving the Senators. For that, I am very grateful.

This is now the Bill. Sen. Wetangula would rather talk about “this is the case,” which we had in court today in the morning but; “this is the Bill”. This Bill defines whether or not we want devolution. I will say just one thing, because the able distinguished Senate Majority Leader has said a lot of things, and I would like my other colleagues to also say something about this matter.

Madam Temporary Speaker, all over the world, people get tired with politicians. When they get tired, you get a leadership emerging in some of the countries that you cannot imagine. It is possible that if we do not do things right in Kenya, the leadership that is going to emerge is not the leadership that the country deserves. If we leave the Constitution to be abused and violated, we can become another such country. There are countries in the world – and I do not want to necessarily talk about the leaders in those countries – take Philippines, for example. There is a leadership that emerged there because the people were tired of politicians not doing the right thing.

Madam Temporary Speaker, I can tell you without fear of contradiction that if this Senate is not ready to defend the Constitution and do things in accordance to the law, the leadership that will emerge in Kenya will not be the people you think. The country will be tired if we cannot defend the Constitution. There can be another unknown character with very bad manners who can emerge as the President of the Republic of Kenya. What we did today went beyond The Division of Revenue Bill and the powers of the Senate under the Constitution. What we were doing is protecting the integrity of this country and the Constitution of Kenya, so that the country gets the leadership it deserves.

I know that as a Senate, we will not allow any other institution to erode our powers. We will not touch the powers of the Executive or the Judiciary, but we will not allow the Executive to erode the powers of the Senate or to take the Senate for granted in any shape or form. The fact that somebody imagined that you can have an Appropriations Act without a Division of Revenue Act was an assault on the Senate. It is not only as assault on the Senate, but an assault on devolution. Devolution is an important pillar under the current Constitution. Article 6, which my learned friend, Sen. Murkomen, quoted right together with Article 10, demonstrates the centrality of devolution in our system of government. As we reduce the publication period of this Bill today, we were doing things they way they should be done. I want to ask the Attorney-General--- I am very proud of the Attorney-General in the United Kingdom.

When the Government of Tony Blair decided to go to war in Iraq, the Attorney General told Tony Blair that going to war in Iraq without seeking the concurrence of other countries within the United Nations system would be a sin and a gross violation of international law. Tony Blair has regretted going to war without following the advice of the Attorney General.

The Attorney General is the principal legal advisor of the President and the Republic of Kenya and he must wake up to the job. He can tell us or the Executive off if we are wrong. That is why he also sits in the Judicial Service Commission. Under the old system, he used to sit in the National Assembly as a Member. I am not pointing an accusing finger but we are going through very difficult times and we need an Attorney General who can stand at any time and place when things are going wrong with the law. That is why I am proud of the Director of Budget, in the Office of the President, for standing up and saying that, ‘what you are doing cannot happen’.

The President will not be allowed to sign the warrants because that would lead to a constitutional crisis. When there is no proper appropriation in the United States of America, even the President cannot do anything. He will just go home and wait for things to be regularised. That is how the rule of law works.

Therefore, what this Senate has done will be remembered a 100 years later. It may not be important now and some people may think that we were just talking today. There are countries where even the Chief Justices have walked in the streets to show that nobody can play around with the judiciary and they have been proven right. Do not be ashamed of walking in the streets because even Mandela walked in the streets and he is now a saint in the international community.

Martin Luther King walked in the streets and he also went to the courts of law. We did a dignified thing today as we should and we went to the right forum to try and determine the dispute that we have at the moment. This is actually not a dispute because it has been resolved by the Supreme Court. When the answer is already there and you do not want to apply it, then something is wrong.

I like former President Kibaki because he had a way of saying very complicated things in a simple way. Allow me to say something that Mwalimu Nyerere used to say in Kiswahili. I want to quote him because I do not want to change the language that he used.

He used to say that:

*“Kuna tofauti kati ya mjinga na mpumbavu. Mjinga ni kukosa kujua lakini ukimfunza, anaweza kupata kuelewa. Lakini, mpumbavu hata ufanye nini, atakuwa mpumbavu leo, kesho na hata kesho kutwa’. Hii imekua mambo ya upumbavu kwa sababu Supreme Court ilitoa uamuzi”.*

I, therefore, support the reduction period of the publication of this Bill. I hope that we will pass the Bill on Tuesday. I can say without fear of contradiction that if we hold firm, the figure in that Bill should not be changed at all. How can we change that Bill when the national Budget is in trillions? The National Intelligence Agency is being given Kshs400 billion and that is one institution. What about 47 counties where things happen? Why are they being given Kshs300 billion? What is that? We should be ashamed. *Bure kabisa!*

I support.

*(Question proposed)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, there is a lot of interest in this Motion. You will each have two minutes. You should go straight to the point.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Speaker. I want to say the following things in two minutes.

This is a momentous occasion. It reminds me of the speech of Winston Churchill in 1940 where he said that:

*“I have nothing to offer other than blood, toil, tears and sweat”.*

Before us, we have the ordeal of the most grievous kind and long months of struggle and suffering. If one asks what is your policy? I will say that, it is to wage war by sea, land and air using all our might and strength that God can give us to fight the monstrous tyranny.

The people who want to abuse this Constitution are the same people who wanted to abuse it in 1966. Unless we want to abolish the Commission on Revenue Authority (CRA), the only figure that makes sense to the country is Kshs335 billion.

As at 30<sup>th</sup> June, 2019, the figure allocated to counties was Kshs314 billion. It is wrong to mislead the President that it was Kshs310 billion and it is now Kshs316 billion. If it looks like a duck, walks like a duck, talks like a duck and quacks like a duck, then it is a duck. We must tell the National Assembly that this Constitution must be respected. The war of reform and change will start in the Senate. We must stand firm, for we are going to suffer, but we will defend ourselves and act in court for Kenya to respect the Senate.

**Sen. Wetangula:** Madam Temporary Speaker, Wole Soyinka in his book, the *Lion and the Jewel* said that a tiger does not proclaim its tigritude; it pounces. This morning, we pounced. We went to court and made our statement. In less than 10 minutes, the judge said that we had raised a strong and substantive legal issue.

We must take the Division of Revenue Bill as it is because there is no other way other than the scientific way through CRA that revenue is divided.

We are not engaging with the “Lower House” in games of money or the box whereby we are being told: “We will add you Kshs2 billion or we will add you Kshs4 billion”; on what basis? We have a scientific calculation from the Commission on Revenue Allocation (CRA) that tells us this is what counties must get.

Madam Temporary Speaker, more importantly, this country should achieve a very simple thing - I think Sen. (Prof.) Ongeru is one of the architects of this - The Abuja Declaration on Health; that each African country must spend a minimum of 15 per cent of its annual budget on health. We have a budget of Kshs3.1 trillion. We are giving counties Kshs335 billion.

Even if they complied with the Abuja Declaration, they will end up spending less than what was recommended by the Abuja Declaration on Health alone because we have Kshs91 billion given to the Ministry of Health that is dealing with 5 per cent of health issues.

So, as we deal with this Division of Revenue Act (DORA), I want to tell those who are trying to bastardize the CRA that, woe unto them because they are what you would call total ignoramuses. These people have lost direction, taken leave of their senses and are behaving as if this country belongs to them.

This country belongs to the people of Kenya. It does not belong to the Leader of Majority in the Senate; it does not belong to the Leader of Majority in the National Assembly. It belongs to the people of Kenya. We swore to defend and uphold the Constitution of the Republic of Kenya. That is what we did this morning.

Thank you.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. From the onset, I support this Motion and I believe that it will be passed quickly.

I want to thank the Speaker and the entire Senate because you gave us an onerous duty of midwifing the process for which we went to court today and we are proud of you.

Thirdly, I want to say that I support this Motion because our counties need more money than ever before. We should be given the amount of Kshs335 billion and we should not cede the ground even on one cent. We must stand with the counties even as we

demand for accountability and transparency for some of these resources. I think the enemies of devolution are now regrouping. Therefore, as the Senate, if we allow this Procedural Motion not to succeed and more money is not added to the counties, then it means we will be allowing the counties and even the Senate to be wound up under our watch.

Madam Temporary Speaker, the law is very clear under Article 153 (3). I have seen some Members of the other House saying that Cabinet Secretaries do not have any business coming to the Senate Committees and the Senate itself. I want to remind them that they should be very careful and should read Article 153(3) which states clearly that all Cabinet Secretaries must appear both in the National Assembly and the Senate.

I support the proposal that more resources be added to the counties and ask that we expeditiously move this Bill so that our counties and the national Government do not face any shutdown. I even urge the President not to continue with the provisions of the Appropriations Act because that Appropriations Act as it is now, is illegal and unconstitutional.

Thank you.

*(Interruption of debate on Motion)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM AVENUE MARIA PRIMARY  
SCHOOL, MAKUENI COUNTY

**The Temporary Speaker** (Sen. Nyamunga): I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Avenue Maria Primary School, Makueni County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Resumption of debate on Motion)*

**Sen. (Prof.) Ongeri:** Madam Temporary Speaker, this is a Procedural Motion. I am glad that today I was able to represent the sovereignty of the people of Kisii County on a matter that is very important to their hearts.

I stand counted because that sovereignty is not for nothing. Why are we talking about sovereignty which is not for nothing? It is because the revenue that is collected in this nation, is collected from taxes that are paid. “Wanjiku”, that little person in the county is the one that pays these taxes.

As the Constitution clearly spells out, we expect that we shall be able to equitably share these resources both at the national and county levels. That has not happened. We are being treated to a circus. The rule of law must apply and it simply states that:

“If there is no Division of Revenue, there will be no Appropriation Bill presented before any House.”

So, whatever is being done is null and void. It is illegal.

Madam Temporary Speaker, I want to clearly state that when the moment for debate comes and the Procedural Motion is over, we shall put across statements to prove our case and then we shall quote the Constitution the way it stands today. As a veteran, I dare say that I am not talking in vain.

Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Mwaura.

**Sen. Mwaura:** Madam Temporary Speaker, sorry, I was caught off-guard talking to my dear senior sister; maybe even mother, Sen. Mugo. It is good to acknowledge when you have a senior Member.

Madam Temporary Speaker, I rise to support this Division of Revenue Bill and to say unapologetically that the boisterous nature in which the National Assembly is conducting itself belongs to the 20<sup>th</sup> Century. They must wake up to the reality that we have a new constitutional dispensation that is anchored on bicameralism.

This idea of thinking that they can just go and hoodwink the Executive because of the National Government Constituency Development Fund (NG-CDF), which I dare say on the Floor of the House that it is unconstitutional. The Executive must not think that by bribing the National Assembly, we in the Senate are going to abrogate our role to superintend over the affairs of counties.

We would want to give notice to the Executive that from now henceforth, it is not going to be business as usual. We truly appreciate that the Presidency has never seen the inside of Senate but that should not make them to imagine that the Senate does not exist.

Today we have made history and we are not going to relent. For those other institutions that are out there thinking that this is the usual war between the two Houses of Parliament, I want to read a quote here by Martin Niemöller who said -

“First, they came for the communists, but I was a communist. So, I did not speak out. Then they came for the socialists, but I was not---”

*(Sen. Mwaura’s microphone went off)*

**The Temporary Speaker** (Sen. Nyamunga): Senator, you are not on record. Sen. Abdullahi Ali.

**Sen. (Dr. Ali):** Thank you, Madam Temporary Speaker. First and foremost, I stand to support the Procedural Motion.

Two, the Senate should stand on its feet, proudly support its activities and fight for its space. I want to quote one of our own people, Raila Amolo Odinga who said, *ukiona simba amenyeshewa, usifikiri ni paka alafu urukeruke uko karibu. Utakufa.*

If you think the Senate, because they are quiet and mature, they do not fight every battle; then you should fight with them, you will die a terrible death. So, I am asking my junior brothers in the National Assembly to be careful of what they are doing. I want to tell Kenyans that we want to know where these Members come from. Do they come from space or counties?

They do not realize that they are denying counties money and that is where their bread is buttered. If they go on misbehaving, then they will put themselves in trouble as well.

I urge my colleagues and the Executive as well, to take care of what they are doing. They have to follow the law and the Constitution and we will support it to the end.

I thank you.

**Sen. Ochillo-Ayacko:** Thank you, Madam Temporary Speaker, for giving me an opportunity to support this Procedural Motion. This is a good Motion and I wholeheartedly support it. I am excited to be part of this because this is something that requires determination and digging in. We are up against people who enjoy impunity and do not respect the law.

I want to plead that we find solace in the words of Patrick Henry. In 1775, in the United States of America (USA), there was a slave who when fighting for the freedom of his people asked the Americans to give him liberty or death. As a Senate, we should find solace in that speech.

The same speech was also echoed by George Washington when he told the British Empire to give them liberty or death. As a Senate, we must go for liberty or die as an institution.

I encourage Members who are here to stand firm even in the face of the likelihood of the death of Senate but we must attain liberty at the end of it all.

With those few remarks, I beg to support.

**Sen. (Prof.) Kamar:** Thank you Madam, Temporary Speaker, for giving me the opportunity to support this Motion that seeks to reduce the period to one day. I support it because the budgets for counties should be sorted out urgently. I also take this opportunity to congratulate the Speaker for leading all of us this morning to go and make a Statement about the role of Senate.

When it comes to budgeting, even as we talk about the Division of Revenue Bill, it is good to remember, as our colleague has said, that 15 per cent of the Budget should go to the health sector because it is a devolved function. Currently, what counties are getting is not enough. The budget is not enough even for the two sectors that have been devolved.

Agriculture needs another 10 per cent as per the international agreements that we signed, yet we are not obeying that. Going forward, it is important for this Senate to look at the international instruments that we signed, so that we allocate the Budget according to what was agreed on. The health sector should get 15 per cent and 90 per cent of the Budget should go to the devolved units. We should observe that because that is the only way we shall make progress.

I thank you.

**Sen. Kasanga:** Madam, Temporary Speaker, I support this Motion. Today I am proud to be a Member of this House. I have a good feeling when I think about the oath that we took. This is the time to demonstrate that we uphold the Constitution and fight for it. I encourage fellow Senators that we have to stand firm against anything against us.

I thank the Chairperson of the Committee on Justice, Legal Affairs and Human Rights because they invited me to participate in the preparation of submissions. We had some leaders who met us today. It was a wonderful moment to walk together hand in hand.

I am looking forward to having a debate because in the previous forum when I had the conversation with Members of the National Assembly, it seemed they have

forgotten. They also took an oath but now they want to sideline and overlook Kenyans. That is very unfortunate.

They have failed to see the point and insist that counties do not deserve that amount of money. They seem to be deliberately and conveniently forgetting. They fail to understand the Constitution and see the whole point why the Constitution was structured in the manner it is. That is a demonstration of mediocrity that Kenyans do not need. Kenyans are suffering and need the money. That is why money should go to the counties because all critical elements have been devolved.

I support this Motion and look forward to debating the Bill. I thank you.

**Sen. Farhiya:** Thank you, Madam Temporary Speaker, for allowing me to contribute in regards to the Procedural Motion on the Division of Revenue Bill. First of all, I thank all the Senators and everybody else who is involved in making sure that counties are protected.

As previously mentioned by my colleagues, what we are asking is only 10 per cent of the total Budget for delivery of most of the services in this country. Health and Agriculture, among others, are devolved functions that Kenyans require services. For instance, where I come from, we have never received such kind of services.

We could be doing much better if resources were in the right hands. Nevertheless, we have received services better than we ever received since this country's Independence. In my own county, there is a 27-kilometer tarmac road. That is the first tarmac road we have ever had since Independence. It came as a result of the Constitution that we have.

This is not about supremacy or massaging egos but about lives of Kenyans. As a House of wisdom and with many learned people, we are here to protect the counties and we have no apologies whatsoever to make.

What happened today is historical. I am proud to be a Member of such an important House.

**Sen. Olekina:** Thank you, Madam Temporary Speaker, for giving me a minute to contribute to this Motion. When I came to this House, I promised to defend the Constitution of Kenya against all enemies; foreign or domestic. That is the power given to me by Article 3 of the Constitution, which requires every Kenyan, including Members of the National Assembly to defend it. We should not get to a position where people seem not to value the Constitution.

I remember someone once said that it does not require a majority to prevail, but rather, an irritated minority, tireless and keen to set bush fires in people's mind. As I support this Motion to reduce the publication period of the Division of Revenue Bill, I think about the people in the county governments who do not get services.

Yesterday, a Bill was introduced here seeking to devolve the services of the Ombudsman. When I stand here as a legislator and Senator of the Republic of Kenya, I take the role of the Ombudsman to ensure that people get their services.

What we did today will go down in history as a time when we said, no to mediocrity and people who think they have all the powers. We should ensure that Kenyans, regardless of where they come from or whether they live on a tree or in a house, get services that were devolved.

I support.

**Sen. Halake:** Madam Temporary Speaker, I rise to support this Procedural Motion. I congratulate, the leadership of the House for taking bold steps to defend the Constitution of Kenya and devolution.

By assenting to the Division of Revenue Bill, His Excellency the President disregarded the recommendations of the Senate. The sharable revenue has been increasing yet---

**Sen. Faki:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): What is your point of order, Sen. Faki?

**Sen. Faki:** On a point of order, Madam Temporary Speaker. To the best of my knowledge, there is no Division of Revenue Act (DoRA) that has been assented to. Can Sen. Halake clarify?

**The Temporary Speaker** (Sen. Nyamunga): Sen. Halake, kindly clarify your statement.

**Sen. Halake:** Madam Temporary Speaker, I stand guided. The Appropriations Bill as assented to, disregards the Commission on Revenue Allocation (CRA) recommendation of Kshs335 billion as well as the Senate's own recommendation. I am proud that this House today stood up to be counted as a defender of devolution.

We see a grand scheme to starve counties of resources for service delivery. The counties face the risk of not providing services. This is one way of killing devolution. We have heard of claims of lack of money to give to the counties because this country is grappling with debts. Who is talking about the debts that are starving the country of money? What we should be focusing on is the public debt.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Halake, your time is up.

Kindly proceed, Sen. Madzayo.

**Sen. Madzayo:** Asante sana, Bi Spika wa Muda. Najiunga na Hoja hii ambayo imeungwa mkono na wenzangu wote. Bubu ni mtu asiye na uwezo wa kuzungumza. Wakati unatesa bubu, itafika wakati bubu ataanza kububuja maneno ili aanze kuongea, unafaa kukimbia mbali sana.

Tulikuwa tumenyamaza kwa muda mrefu sana, lakini sasa tunawaambia ndugu zetu kwamba hatunyamazi tena. Maseneta 52 walioandamana leo ni walinzi wa serikali za kaunti. Tulienda kortini leo kudai haki ya serikali za kaunti. Nia yetu ni kuona kwamba serikali za kaunti zimepata fedha zao na wanaweza kutekeleza wajibu wao kwa wananchi.

Bi. Spika wa Muda, naunga mkono kwa dhati Hoja hii na Jumanne ikifika---

**The Temporary Speaker** (Sen. Nyamunga): Sen. Madzayo, your time is up.

Kindly proceed, Sen. Ndwiga.

**Sen. Ndwiga:** Madam Temporary Speaker, I join my colleagues in supporting this Motion. You will remember that this is not the first time that the Senate of the Republic of Kenya is in entanglement with the Executive. Those of us who know what happened in the early *Majimbo* Senate are very sad. What is happening now has the makings of killing devolution.

*[The Temporary Speaker (Sen. Nyamunga left the Chair)]*

*[The Temporary Speaker (Sen. (Dr.) Lelegwe) in the Chair]*

Mr. Temporary Speaker, Sir, I hope that our colleagues in the National Assembly will wake up one day and read their history so that they will be better informed. *Majimbo* was deliberately killed in a systematic way. First, the Executive started by denying the *Majimbos* resources. That is exactly what is happening today. Anybody who cannot see that must be blind.

There is a bigger objective for all the wrangles that we have between the Senate and the National Assembly and that is to kill devolution. I hope that as the Senate, we will continue to safeguard and defend the institutions which were created by the 2010 Constitution.

I thank you.

**Sen. (Eng.) Hargura:** Mr. Temporary Speaker, Sir, I support this Procedural Motion to reduce the publication period for the Senate Division of Revenue Bill.

As elected leaders at whatever level, we must acknowledge that we owe our first responsibility to the people of Kenya at whatever level. We should always make sure that their interests are taken care of even if development is to be carried out in any area or during any allocation of resources, other people should not be disadvantaged. It should always be cumulatively increased for them and that is why we have to take this step.

The Senate is here to represent the counties and serve the interests of the counties and their governments. That is why we have resisted any reduction in whatever was recommended by the CRA which is technically mandated to come up with figures.

We have to see this Bill through and make the point clear. Whoever, is supposed to act on it should know that we are here for the interests of Kenyans who are the people that we are servicing and not the Executive or any other arm of Government.

Mr. Temporary Speaker, Sir, we have to make sure that we defend the Constitution by ensuring that it is not eroded the way others are trying to do it. We should progressively put our country on a trajectory of development and not take it backwards.

I thank you.

**Sen. (Rev.) Waqo:** Mr. Temporary Speaker, Sir, I stand to support this Procedural Motion. Today, we are proud as the Senate for what we did. Personally, it was my first time to participate in a demonstration and to enter a court. I am proud of myself because I have done it on behalf of Kenyans. As a result of this Motion, the Division on Revenue Bill that will follow, is what we as Senators will support in unison for 'Wanjiku' that we represent.

The idea of National Assembly alleging that governors are misusing money is not relevant because they are not discipline masters. We will support the Bill and pass it as soon as possible.

I thank you.

**Sen. (Dr.) Musuruve:** Mr. Temporary Speaker, Sir, I thank you for giving me this opportunity to support this Procedural Motion. I was happy when we matched to the court because we represented Kenyans. We are here to represent the counties and their interests.

Despite the fact that Kenya ratified the Abuja Declaration as well as the Maputo Declaration to affirm that 15 per cent and 10 per cent goes to health and farming respectively, the state of these two sectors in the counties is wanting.

It is unfortunate that the National Assembly has turned their back against what is happening in the counties. The National Assembly should know that we must work as partners to ensure that we serve Kenyans. If we cannot deliver to Kenyans, even the National Assembly has no business being there. We must be keen and sensitive to our people in the counties. We can only defend Article 1 of the Constitution if we ensure that services are reaching all Kenyans. Power belongs to the people and this can be implemented at the county level.

Mr. Temporary Speaker, Sir, I support this Motion because we will go down on record having defended the counties. We are here to defend the counties. That is our business in the Senate. We have no other business. It is the core business that we must support.

I encourage my fellow Senators that we should press on---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Your time is up. Sen. M. Kajwang', proceed.

**Sen. M. Kajwang'**: Mr. Temporary Speaker, Sir, I support the Procedural Motion. It is important to note that in a bicameral system, the two Houses will not always agree. Kenyans should not be alarmed when the Senate and the National Assembly do not agree. We should also not go into tantrums when the National Assembly does not agree with us or when we do not agree with the National Assembly. That is a feature of bicameralism.

In a bicameral system, they say, it is only fools who rarely differ. I believe in a bicameral system. We will have this kind of situation but that is why we have the route of mediation and the option of going to court which we exercised today.

Secondly, there is a crisis in this country. It is not just a crisis for counties as governors stated when they went to the Supreme Court. Even the national Government cannot draw money because the Appropriations Bill that was signed by the President is illegal.

Mr. Temporary Speaker, Sir, there is a mother-child relationship here. The Division of Revenue Act (DORA) would be the mother and father which gives birth to the Appropriations Bill and to the County Allocation of Revenue Bill. Until both Houses consummate DORA, then there is no way DORA can give birth. There is no way the Appropriations Act can be born. It is a national crisis and that is why we need to shorten debate on this to one day.

We must tell the nation that we have a basis and a formula for sticking to the Kshs335 billion. People think that we plucked that from the air. The last allocation was Kshs314 billion and we have said that the revenue growth factor shall be 6 per cent. If we apply 6 per cent to Kshs314 billion, you get Kshs335 billion. Even when we climbed down to Kshs327 billion, we only changed the revenue growth factor from 6 per cent to 4 per cent. Senate is not engaged in guess work.

Mr. Temporary Speaker, Sir, finally, in the last financial year, the President did the same thing that he has done this year. I thank God for the handshake because last year when we raised such issues in this House---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Your time is up. Proceed, Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to support this Procedural Motion. We should note that the Kshs335 billion to the counties should not be reduced even by Kshs1. More specifically, there is one institution that has been allocated Kshs1 billion. The people who pay the taxes are the people in the counties and it is unfortunate that right now, when we want to allocate resources to ensure that they receive the necessary services, funding is reduced.

If this Senate is not careful, then it shall be disbanded like the one of 1963. However, what we did today will go a long way to ensure that this is a House to reckon with. At this particular point, I wish to thank the Speaker and our leadership for guiding us today to the court. I am sure that we spoke loudly to the whole world; that the Senate is there to guard the Constitution and ensure that devolution is there to stay.

Mr. Temporary Speaker, Sir, it is unfortunate that some of the institutions that guide us in terms of revenue allocation, that is, the Commission on Revenue Allocation, in this case, has been ignored yet it has been established legally. It is high time that we recognized our institutions and ensured that whatever they propose shall be followed to the letter.

We have very many services that have been devolved to the counties, although many of them have not been given enough funding because---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Your time is up. Let us have Sen. Mary Seneta.

**Sen. Seneta:** Mr. Temporary Speaker, Sir, I support the Motion on reduction of publication period of the Division of Revenue Bill. I would like us to note that the people of Kenya voted for the 2010 Constitution because it recognizes decentralization of resources to all corners of this country. Therefore, the move by the National Assembly to bring back resources to the Central Government is not only unfortunate but also a very sad thing to happen at this time.

It is also important to note that the resources we are talking about are taxes that are from the same Kenyans we are protecting. Therefore, the move to protect all institutions in the new Constitution is not only important but it is very timely for this country to move forward.

I thank you.

**Sen. Mwangi:** Thank you, Mr. Temporary Speaker, Sir, for giving me this chance. From the onset, I support this Procedural Motion. Senators in this House are fighting for the people of Kenya. I remind the National Assembly that the people of Kenya are not in the National Assembly. The people of Kenya are in counties.

The Constitution is very clear; that one of the cardinal objectives of the Senate is to protect devolution. If we have to protect devolution, we have to ensure that they get enough funding. It is arrogant of the National Assembly to think that they can debate an Appropriation Bill and take it to the President for assent before the Division of Revenue Allocation Bill has been okayed by both Houses.

It is time the National Assembly knew that this Senate was elected by the people of Kenya and Senators were elected by a bigger population than those who elected the Members of the National Assembly. Senators do not have funds to execute their

constitutional mandate. We cannot do oversight because there are no funds. We have not been given funds to do it.

While governors are stealing---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order Senator. You are not on record.

Sen. Faki, you may now proceed.

**Sen. Faki:** Asante Bw. Spika wa Muda kwa kunipa fursa hii kuchangia Hoja ya kupunguza muda wa Mswada wa DORA ambayo imewasilishwa na Kiongozi wa Wengi katika Bunge la Seneti. Kwanza, ninachukua fursa hii kuwapongeza viongozi, Spika na Maseneta wote ambao walijitolea asubuhi ya leo kufika mahakamani ili kuwasilisha kesi muhimu ambayo itaangalia mustakabali wa sheria kwa muda mrefu utakaofuata.

Kilikuwa ni kitendo cha ujasiri na vile vile ni kitendo cha ustaarabu kwa sababu hatuwezi kuwa tunapigana saa zote wakati kuna taasisi za kisheria.

*(Sen. (Dr.) Milgo consulted loudly)*

Naomba unilinde kutokana na Sen. (Dr.) Milgo, kwa sababu wanashauriana kwa sauti zaidi.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, hon. Senators. Consult in low tones. You may continue, Sen. Faki.

**Sen. Faki:** Bw. Spika wa Muda, nimeona ya kwamba, ni kitendo cha ujasiri na pia cha kistaarabu kwa sababu sisi kama Wabunge hatufai kogombana hadharani kwa muda mrefu. Kilikuwa ni kitendo cha ujasiri na tunakiunga mkono na tutakuwa tayari sisi mawakili ambao tuko katika Bunge hili kuwakilisha kesi hii mpaka itakapofika tamati.

Mswada ambao uko mbele yetu ni muhimu kwa sababu tumeona ya kwamba, DORA haijapitishwa, ilhali Bunge la Kitaifa lilipitisha *Appropriations Bill*.

Inafaa tupitithe hiyo Division of Revenue Bill (DORA) kwa haraka zaidi ili kusiwe na upungufu wowote wa huduma kwa wananchi ambao wanategemea pesa hizi ziwafikie ili waweze kupata huduma mbali mbali kama afya na mengineo.

Bw. Spika wa Muda, tumeona kwamba kumekuwa na mvutano wa---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen. Faki. You are out of record. Proceed, Sen. Mugo.

**Sen. Mugo:** Thank you, Mr. Temporary Speaker, Sir, for the opportunity to also support this Procedural Motion on the Floor. I want, first of all, to commend my colleague hon. Senators who went to court this morning so that we can get justice not just as a House, but as people of Kenya. I would like to remind the National Assembly that during the Constitution-making process, teams went around the country gathering information as to the kind of Constitution the people of Kenya wanted.

The people of Kenya chose to have the Senate and that is why it is in the Constitution. The National Assembly was still there but the people of Kenya were not satisfied with just that one institution; they wanted to have a Senate. Therefore, the National Assembly has no authority to try and work against the Senate because their wish cannot supersede the wish of Kenyans. All authority belongs to the people of Kenya. We are only representatives of Kenyans and Senators are representatives just like the National Assembly, Members of Parliament.

Mr. Temporary Speaker, Sir, I was shocked to hear the kind of language that some of them were using against this House. I wondered whether these are really leaders who want our children to copy them---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Senator. Proceed, Sen. Wario.

**Sen. Wario:** Asante Bw. Spika wa Muda, kwa kunipa nafasi hii kuchangia Hoja hii ya DORA. Ningependa pia kuweka sauti yangu katika kuheshimu Seneti kwa sababu tuko na nyumba mbili za kutengeneza sheria. Hasa Seneti hii inafanya watu ambao wametuchagua katika sehemu zetu kufikiwa na pesa. Kama kutakuwa na kizungumkuti cha watu ambao wanataka kupinga pesa zisifikie Wakenya, ni lazima sisi tusimame wima tuseme, hapana, haiwezekani.

Ni lazima watu wetu wapate huduma za afya. Inafaa pesa zifike upande huo kwa sababu ikiwa pesa zitakuwa zinabaki hapa juu, tunajua hakuna maendeleo yatatendeka. Tuliapa kwa Biblia na Quran tukasema tutakinga ugatuzi kabisa usije ukaangushwa.

Wale ambao wanapinga mambo ya Seneti ni wale wanaosema ugatuzi uanguke. Sisi tunasema ugatuzi uendelee na fedha zifike Mashinani. Pesa katika Mswada ambao ulikuwa umetolewa isipunguzwe hata kidogo kwa sababu Bunge la Kitaifa wanataka kupunguza fedha hizi, ila sijui ni wapi wanataka kuzipeleka. Sisi tuko wima, tumesismama kama milingoti kusema ugatuzi uendelee na pesa nyingi zifikie watu wetu ili waweze kupata huduma zile zinazofaa huko mashinani.

Bw. Spika wa Muda mimi naunga---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen. Wario.

I now call upon the Mover to reply.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, I want to thank all the Senators for their weighty contributions. I can see they are very motivated towards what we are going to do on Tuesday. I, therefore, do not want to anticipate debate but just to appreciate everybody for their very succinct comment on this very important subject matter.

I beg to move.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, the Motion in question does not affect counties. I will, therefore, put the question.

*(Question put and agreed to)*

Next Order.

## BILL

### *First Reading*

THE DIVISION OF REVENUE BILL  
(SENATE BILLS NO. 13 OF 2019)

*(Order for the First Reading read, read the First Time  
and Committed to the relevant Committee)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): We now go back to Order No. 7; Statements as listed in the Appendix.  
Proceed, Senate Majority Leader.

*(Resumption of Statements)*

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 23<sup>RD</sup> JULY, 2019

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Temporary Speaker, Sir. Pursuant to Standing Order 52(1), I hereby present to the Senate, the business of the House for the week commencing Tuesday, 23<sup>rd</sup> July, 2019.

On Tuesday 23<sup>rd</sup> July, 2019, the Senate Business Committee (SBC) will meet to schedule the business for the week. On the same day, the Senate will consider Bills at Second Reading stage, at the Committee of the Whole stage and the business that will not be concluded in today's Order Paper.

On Wednesday, 24<sup>th</sup> July, 2019 and Thursday, 25<sup>th</sup> July, 2019, the Senate will consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

Hon. Senators, I am happy to note that the Senate was able to pass a number of Bills last week on Wednesday, 10<sup>th</sup> July, 2019. This was commendable and I urge you to continue in the same spirit. However, some of the business scheduled in the Order Paper ended up being deferred due to the absence in the Chamber, of the Movers of such business to prosecute them. I urge all Honourable Senators to be vigilant and be available to prosecute the business listed.

While the House is proceeding fairly well on Bills, there are still quite a number of Petitions referred to Standing Committees for consideration whose reports are yet to be tabled in the House. I urge respective Standing Committees to consider them expeditiously and to table reports on them, pursuant to the Standing Orders.

Mr. Temporary Speaker, Sir, before I conclude with the Statement, I wish to take this opportunity to thank the Chairpersons of Committees, who have issued Statements pursuant to Standing Order 51 (1) (b) relating to the activities of their Committees for the period 1<sup>st</sup> January to 30<sup>th</sup> June, 2019.

From the reports so far, the Senate has demonstrated its commitment to serve the people of Kenya, to defend the Constitution and to uphold the rule of law. This is a commitment that we seek to pursue for the life of the Twelfth Parliament.

I thank you, and hereby lay the Statement on the Table of the House.

*(Sen. Murkomen laid the document on the Table)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed, Sen. (Prof.) Kamar.

## MAIZE SITUATION IN THE COUNTRY

**Sen. (Prof.) Kamar:** Thank you, Mr. Temporary Speaker, Sir. Pursuant to Standing Order 47(1) I would like to make a Statement on the maize situation in the country.

Senators will recall that an *ad hoc* Committee on the maize crisis, which I chaired, was set up by a resolution of this House on 8<sup>th</sup> August, 2018, to investigate and come up with solutions that would enable farmers overcome the challenges related to production, management and sell of maize, particularly, to the National Cereals and Produce Board (NCPB).

Senators will further recall that the said Committee did the assignment diligently and a report was tabled in this House, debated and passed by resolution on 28<sup>th</sup> February, 2019. Thereafter, the Office of the Clerk, pursuant to Standing Order No.215 conveyed the resolution and report to the relevant Cabinet Secretaries (CSs) and independent commissions.

It was expected, under the same Standing Order No.215(2), that within 60 days of the resolution, the CSs and holders of relevant independent offices would provide to this Senate, through the Committee on Agriculture, Livestock and Fisheries, a report on how they plan to handle the resolutions that came from this House.

Mr. Temporary Speaker, Sir, it is now 120 days since the Clerk transmitted the resolutions and no report has been brought forth through our Committee. Furthermore, we are currently faced with a new maize crisis which is being orchestrated by the Ministry of Agriculture and Irrigation, with an interest to import maize even during a year when God has been merciful to the Kenyan farmer and given us good rains.

The CS has been heard in media houses as well as when he addressed the National Assembly, claiming that there is a maize crisis and yet harvesting is expected to begin in the next two months in the maize growing areas of this country. Furthermore, the same Ministry did not fund the NCPB to buy maize harvested in 2018 from farmers. It should be noted that NCPB bought less than 40 per cent of the 2018 produce. In particular, it limited the amount of maize that was supposed to be released by the farmers.

Around March, 2019, large scale farmers were asked not to deliver anything more than 400 bags. We are aware that at that time, there were farmers who had even over 10,000 bags in their stores. In fact, large scale farmers only managed to deliver the 400 bags within the month of March and the NCPB was closed.

Mr. Temporary, Speaker, Sir, it is extremely unfortunate that in May, 2019, the same CS went ahead to seek a window to import maize without taking stock of the amount of maize that the large-scale farmers still had. To date, we do not know the exact figure that is in the stores and what was delivered. The actions of the Ministry are worrying because that could cause instability in the maize production sector and, hence, food insecurity in this country. We all know that maize means food in this country.

Our Committee on Agriculture, Livestock and Fisheries must take very keen interest in the staple food of Kenyans. Agriculture is a devolved function. As it has been mentioned, the budget for agriculture according to a Declaration by the African Union (AU), should be 15 per cent. The Committee must take keen interest right from the

budgeting for the agricultural sector. We should look at the recommendations of the Committee.

Mr. Temporary Speaker, Sir, our Committee overhauled the system in the resolutions that were passed by this House. We looked at the production systems, inputs, storage and the selling. We assumed that once the report is out, the Ministry will take interest in it and go ahead and come up with a different way of dealing with maize, which is staple food of this country.

The Committee, therefore, must keenly follow up on the implementation of the House resolutions because we gave them to a number of committees.

The Committee on Agriculture, Livestock and Fisheries was tasked with the responsibility but some tasks were assigned to the Committee on Justice, Legal affairs and Human Rights while others to the Committee on Labour and Social Welfare. Our committees must take up our reports and follow up with the respective Ministries, so that this country gets value for the investment and also stabilise food security.

Finally, today we have debated the Division of Revenue Bill, which is more or less the Budget. We have said that about 15 per cent of the Budget should go to the health sector. It was also resolved that 10 per cent of the Budget should go to agriculture. Out of the annual budgets, some African countries give 25 per cent to these sectors. Since they are devolved, it means 25 per cent of the Budget should be the foundation budget for our counties to enable the two main sectors that have been fully devolved to take off.

Once again, Members of the Committee should look into our recommendations and bring their resolutions back to us.

I thank you.

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, I thank and congratulate the Senator for Uasin Gishu County, with whom we co-chaired the *ad hoc* Committee on the maize crisis, for bringing this Statement to the Floor. I am equally happy that the Chairperson of the Committee on Agriculture, Livestock and Fisheries is here and I would like to hear his position on this matter.

The *ad hoc* Committee on the maize crisis made very intensive and extensive collection of views from farmers in maize growing areas. Every Kenyan saw that, particularly the public hearings in Eldoret and the feeling of the Kenyan farmer that was displayed. One would have expected that the Ministry of Agriculture and Irrigation would call a stakeholders' meeting or even engage the Senate to discuss the outcome of the *ad hoc* Committee on the maize crisis proceedings and what they should do to improve the situation.

Instead, we are hearing all manner of contradictory statements. What we have heard is that they will import 19 million and then 12.5 million bags of maize. The Chairperson of the Strategic Food Reserve Trust Fund (STRTF), Dr. Noah Wekesa, who is a consummate maize farmer said that from where he sits as the Chairperson of the State parastatal, there is no shortage of maize in the country and there is no need to import maize. The CS who should be relying on the Chairperson for technical advice, said they will import 19 million and then 12.5 million bags of maize.

Those of us who come from grain growing areas of this country know that as the Statement says, God has been very fair to Kenyans this year because the rains have been

good. If you look at the crop in the fields, you can tell that we will have a bumper harvest.

Mr. Temporary Speaker, Sir, assuming that you want to start importing maize today given our procurement processes and procedures, it means that whatever grain you import will land in the port of Mombasa in a minimum of the next two months, by which time, the heaviest grain growing areas of Trans Nzoia, Uasin Gishu, West Pokot, Bungoma and others will be harvesting. Instead of importing maize, why can we not support the farmer?

The President has rolled out his Big Four Agenda and one of them is food security. How will this country achieve food security if the farmer who toils and moils morning to evening to feed Kenyans is the most neglected person in the country?

Mr. Temporary Speaker, Sir, every time a Kenyan grain farmer has a bumper harvest, it is a nightmare in their lives. The crop drops sometimes up to Kshs1,000 per bag. The Government wants to engage in a luxury of importing maize at Kshs4,500 to Kshs5,000 a bag. Therefore, it will support farmers of other countries and ignore our farmers.

This House, as the defender of counties and their governments, that represents issues of devolution and agriculture which is a 100 per cent devolved, must resoundingly speak up against the intended importation of maize.

If you look at this year's Budget, there is no allocation to cereals boards for purpose of buying crops from the farmers. How is this country moving? We have committed ourselves through the Maputo Declaration to support the farmer through our budgets of not less than 10 per cent. In fact, if you cut across the counties, the amount of money put in agriculture is less than 2 per cent of the national Budget aggregate.

Mr. Temporary Speaker, Sir, yesterday, the Cabinet Secretary (CS) changed tune and said that he will not import maize from Mexico. We are not opposing the importation of maize from Mexico only. We are opposing the importation of maize from anywhere on the globe as long as the maize of Kenyan farmer is still in the *ghalas*, cereals boards and farms. Importing cereals to cover the deficit is not wrong. However, how do you recklessly embark on importation without any scientific analysis on what we have and what is the deficit? The CS has not told Kenyans why he wants to import maize or why the idea of importing maize came to his head at all. This House must stand up to be counted.

The Chairperson of the Committee must, without any concession from this House, summon the CS to the Committee of the Whole so that Members of this House, whether they represent maize farmers or maize eaters where they do not grow maize can engage with him.

My brother, Sen. Wario, is from Tana River County where maize is not grown. However, Galana Kulalu scandal is in his county. He represents people who eat maize. My brother Sen. Mwaura is from Kiambu where they do not grow maize but they eat it. So, everybody has an interest in this matter.

**Sen. Mwaura:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is your point of order?

**Sen. Mwaura:** Mr. Temporary Speaker, Sir, is the distinguished Senator for Bungoma in order to insinuate or suggest that the people of Kiambu County do not grow

maize, yet in my own backyard, I have a lot of maize stock? We are the great eaters of *githeri*.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order. Hon. Senators. Proceed, Sen. Wetangula.

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, we are not talking of people who grow maize in baskets on their balconies.

*(Laughter)*

We are talking of people who seriously grow maize to feed this country and they are definitely not found in Kiambu. However, the people of Kiambu consume maize just like everybody else. So, it is affected in one way or the other.

I end by urging this House to stand together the way we stood in the debate on the *ad hoc* Committee on maize. We must defend the farmer. The Government has a duty and if it abdicates it, this House must remain the last line of defence for the Kenyan farmer.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, as a large-scale maize farmer, I am distinguished from Sen. Mwaura.

I have a lot of interest on this matter. The crux of this issue from both Sen. (Prof.) Kamar and Sen. Wetangula who led the Committee that dealt with the maize issue, is basically the implementation of the recommendation of that Committee. We have become a nation of so many reports and few doers or implementers.

As a country, we pride ourselves as being the nation that took a particular report to Botswana or Ethiopia and they improved their education. You can see how they are implementing a strong energy sector, yet we continue to lag behind. We have brains to work on good reports, however, when it comes to implementation, we have a Government policy that is guided by the wishes of the person who holds office at the particular time.

It begs the question, how seriously the reports of this House are considered by the Ministries, not just in the maize sectors but other sectors. If our reports were implemented as they ought to be, the discussion about importation of maize would not have ensued.

Mr. Temporary Speaker, Sir, Sen. (Prof.) Kamar will tell you that in Moiben Constituency, which is her constituency and some parts of Trans Nzoia, there was a moratorium which was given by the Government through the National Cereals and Produce Board (NCPB) to limit the bags of maize that were to be delivered by farmers to the NCPB. As a result, most of the farmers were not able to deliver the maize to our Strategic Grain Reserves. We also know that many of those farmers still have maize in their houses and stores.

Mr. Temporary Speaker, Sir, this is a serious issue. When we were debating the report, I insisted that there were unnecessary road blocks and deliberate decisions of Government to make it impossible for farmers to deliver maize to Government stores.

I say this knowing that I struggled to deliver the maize that I have struggled to farm for the purpose of selling to the National Strategic Grain Reserves. These rules were

developed and disguised to protect matters corruption, yet the real corruption is the policies that are meant to stifle the farmer to create room for a foreign farmer to bring maize to this country.

I met the people of Ethics and Anti-Corruption Commission (EACC) and told them that they were aiding corruption by allowing people to import maize to this country and making it impossible for farmers and those who want to assist small-scale farmers to deliver the maize to NCPB.

As we speak, farmers from Moiben Constituency and Trans Nzoia have been taken through court processes. Their mistake is that they delivered maize from their farms and they do not look like they are rich.

Mr. Temporary Speaker, Sir, one farmer called Ms. Victoria who comes from Moiben Constituency and has roots in my county has been taken through court process with her children. The only mistake she made is to farm thousands of acres and assisting farmers from the neighbourhood to carry the maize to the store. The other mistake is that she did not look rich enough or like a rich person.

The people who were questioned said: “The argument that I saw on television is that she was building a good house and she lives in the village. How did she get Kshs200 million? What makes her qualify for the Kshs200 million payments?” That became a chorus across the country.

Last year, farmers were extremely frustrated and the real importers of maize were never taken to any court. They were never arrested or questioned despite the Report that came to this House stating that some people who owned no single piece of land delivered a lot of maize to the National Cereals and Produce Board (NCPB) store in Bungoma.

The Ministry of Agriculture and Irrigation should tell us if the farmers will go through the same madness that we saw last year now that they are almost harvesting their maize. Will the farmers in rural areas, who do not have legal agreements, title deeds from their late parents or signed leases, be subjected to these strictures, to make it impossible for them to deliver maize to NCPB? Are they going to use that to block them from supplying maize then later say that the maize in the reserve has been exhausted, so as to create room for cartels to import maize? That is an issue that must be addressed to prevent them from asking for a licence to import maize in a few months from now, yet this country has enough farmers who are running away from planting maize because of the frustrations that they go through.

I agree with Sen. (Prof.) Kamar. We must rethink if there is need of having the Committee on Implementation or whether the functions of the Committee on Implementation can be carried out by the departmental Committees that we have. Those Committees can summon the Cabinet Secretary (CS) for Agriculture and Irrigation and have him respond to the questions. We know that the Clerk of this House wrote to the CS. They need to come here and tell us how far they have gone with the implementation of the recommendations that came from this august House.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I want to thank my neighbour, Sen. (Prof.) Kamar, for that Statement. I know that the issue of maize has been with us for the past few days because the Ministry of Agriculture and Irrigation indicated that they wanted to import maize, so as to protect the eaters of *ugali*.

The insinuation is that if maize is not imported, the prize of maize flour will continue going up.

We do grow maize in the North Rift. The Ministry of Agriculture and Irrigation reported that we had a bumper harvest of 46 million bags of maize. The big question then is: Why should we import maize when we are only two or three months away from harvest? I happened to be in Hamisi on Sunday, where I ate boiled maize and saw others being dried. It is unfortunate that the Ministry of Agriculture and Irrigation wants to import maize, yet the Strategic Food Reserve (SFR) has said that there is enough maize in the country. Therefore, this matter needs to be treated with urgency.

I was part of the *Ad hoc* Committee, and we wrote a superb Report. So many Committees were required to follow up on the recommendations and resolutions of the *Ad hoc* Committee. My Committee on Justice Legal Affairs and Human Rights was to make a follow up with the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) on the investigations and vetting of farmers because a total of Kshs4.5 billion was supposed to be paid to the farmers. I agree that in liaison with the Committee on Agriculture, Livestock and Fisheries, which is led by Sen. Ndwiga, we need to follow up on various recommendations that were made by the *Ad hoc* Committee.

The genesis of the 2017 maize issues was the two *gazette* notices that were published. It is true that 40 million plus Kenyans today consume maize either directly or indirectly. Therefore, we must protect the maize farmers by providing a market for them. In my county, Nandi County, around 68,000 hectares is covered by maize. Mosop Sub-county and Chesumei Sub-county in Nandi County largely depend on maize.

Some of us went to school because our parents planted and mopped up maize. My mother used to mop up maize that she would then sell and pay our school fees. Therefore, I feel bad when I see EACC and DCI rounding up women and men who buy maize from people who have half an acre or one acre. We must have a candid conversation on this.

We must amend the NCPB Act of 1994 and devolve NCPB, or do away with it. We must also find a way of having strategic food reserve. We must also have a continuous nexus between NCPB and SFR for us not to have breakdown of information.

I agree that the governors must be given the opportunity to run and manage the NCPB because agriculture is a devolved function. Yesterday, we saw the Members of the National Assembly doing a devolved function, yet they have been complaining that Senate is overstretching its mandate.

Under the Kibaki administration, there was a national subsidy programme. We expected the National Assembly to include around Kshs11 billion in the Budget for subsidy fertilisers to our farmers. That is what countries that are food secure do. One of the key pillars of the President's Big Four Agenda is food security. We cannot have a discussion on food security, yet we have not allocated more than Kshs11 billion that was meant for subsidy fertilisers. Those fertilisers are not only meant for maize farmers, but also for coffee, tea and other farmers who are to be given subsidy fertilisers. That will help them spur production.

We urge the county governments, through the Committee on Agriculture, Livestock and Fisheries, to allocate more resources, so as to make agriculture more lucrative and attractive. According to the statistics of World Bank, the youngest farmer is

more than 50 years of age, and that is unfortunate. We have to stop the use of agrarian system of agricultural farming in this country. We have to look for ways of making the young people appreciate farming.

We can use modern technology to produce more. That is what we are looking forward to. We do not want Genetically Modified Organism (GMO) to get into the country. Instead, we can have a better way of improving the quality of maize or any other crops by involving the younger farmers.

The entire North Rift and the other regions that plant maize are looking up to the Senate to provide direction. During vetting, we realised that most farmers have died because of high blood pressure. Many are unable take their children to school and cannot pay their bills because EACC and DCI are still conducting investigations. It is sad that we introduced a vetting process.

For some of us who come from the region, you can be in possession of land but not be the owner. However, they are saying that, for example, Village 'A' should deliver certain amounts of maize. They are also saying that one should have a letter from the chief, assistant chief or *kokwet* elder. They can even say that you should have a letter from your pastor, priest or Imam. We know that some chiefs would want a sheep or goat, so that they can write you a letter.

Mr. Temporary Speaker, Sir, the vetting process has been very tedious. It is good that you come from Samburu County. You know that there are many young people who lease land in the North Rift and other maize growing areas, but do not have the ownership. Why is the NCPB introducing stringent measures that are only meant to stifle young people from participating in the production of maize or any other production in this country?

My colleague, Senators, I urge that we assist the maize farmers because all of us are *ugali* eaters in this country.

**Sen. Were:** Thank you, Mr. Temporary Speaker, Sir. I will now make my contribution to the Statement by Sen. (Prof.) Kamar, who together with Sen. Wetangula, chaired the *Ad hoc* Committee on the Maize Crisis.

The Committee, of which I was a Member, made various recommendations. I was surprised and shocked to learn that the Minister for Agriculture and Irrigation intends to import maize, mainly because the issues we laid out in that Committee last year had not been resolved. How are they then importing maize when standards at the borders are not yet set, and the Kenya Revenue Authority (KRA) has not yet answered us on what exactly happened during that crisis?

We also found out that 65 per cent of Kenyans consider maize as their staple food and 35 per cent of our nutrition intake is maize. Therefore, maize equals food security. For that reason, when the Strategic Food Reserve that is in charge of food security says that we have maize, there is no way the Cabinet Secretary for Agriculture and Irrigation should contradict that statement.

Mr. Temporary Speaker, Sir, I was also in shock mainly because they want to import maize in July when farmers are harvesting. We are eating dry maize in the maize producing counties. Why are they then importing? Farmers still have maize in their stores from the last harvest. Have counties been consulted in terms of what they have in their

stores before the decision to import is made? Otherwise, we shall continue to have the problems we had last season when the importation was done in a very irregular manner.

The same way that importation was carried out to the detriment of the farmer, is still the way that is being followed right now by the Cabinet Secretary for Agriculture and Irrigation. He needs to establish the facts then give us the status of the recommendation we made this far. He can then decide whether he is importing and the quantity to import. We are not opposed to Mexico or any importation even from our neighbouring countries. It should be stemmed despite the protocol agreements we have until we have finished with the maize that farmers have in their stores.

Mr. Temporary Speaker, Sir, I also urge the Council of Governors(CoG), especially, governors from maize producing counties in Western Kenya and the North Rift, to redistribute some of the maize that they have to counties that are lacking through the structures of the CoG. That was also one of our recommendations.

That Committee also recommended that counties set up millers and driers, so that farmers do not have to get rid of their green maize early. They should have drying systems, so that we have maize for *ugali* when we need it.

I urge that the Senate continues to consider the setting up of the Implementation Committee because the Committee on Agriculture, Livestock and Fisheries does not need to reinvent the wheel. They just need to look at the report of that Committee and seek the implementation of these recommendations.

I thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to also register my support to this Statement by my colleague, Sen. (Prof.) Kamar. It is about a very poignant issue in our country at this point in time. We are discussing something that we ought not to because we cannot consider ourselves to be a dignified society if we cannot comfortably feed our people.

All these conferences we keep on having in Kenya--- Yesterday, I saw the gathering of Common Market for Eastern and Southern Africa (COMESA) attended by Presidents from across East Africa. What are we discussing if we cannot comfortably put the very basic things such as food on the table of our citizens at a good price?

What that Committee of the Senate demanded from the Ministry of Agriculture, Livestock and Fisheries was on how to handle the maize issue in our country. It was not rocket science; their points were straightforward. It was very specific on what each Government department needs to do.

I urge my colleague, Sen. (Prof.) Kamar, to be in the forefront in drafting some of these Bills because during the debate on the Report of the *Ad hoc* Committee on the Maize Crisis there were certain legislative gaps that were identified by our colleagues who contributed. I remember one of the key issues that continues to crop up is why we want to still retain NCPB as a national Government entity. Why can we not devolve it?

At least from my experience, I know that every leading maize-producing county has an NCPB silo. Therefore, allowing them at the county level to manage their own silos, such that they will be able to identify who the farmers are and the people who have the produce and can supply to the country at the prices that are needed, would be a very

simple exercise. However, because of the greed that has permeated so strongly in our society, this has been difficult.

Mr. Temporary Speaker, Sir, the question we need to continue asking is: “How much is enough and how much can people accumulate?” Many of these struggles we continue to speak about as a country is just because people are greedy. They want to create a crisis, which is why there was delayed importation of fertiliser. There is no rocket science that the countries we are importing maize from are engaged in. They have just made sure that farm inputs are available to the farmers at extremely low prices. That is how they are able to produce their maize at the price they are producing.

It is not that Kenya does not know that, but because the people in positions of power are only interested in lining their pockets. We, as a House, have also failed to hold them to account. This is because, for sure, we cannot turn the Parliament of Kenya into a House of lamentation. We come and lament every other moment without identifying ways in which we will solve some of these issues.

Mr. Temporary Speaker, Sir, it will be so unfortunate of us if we do not address our farmers and give them direction, particularly on this issue. I, therefore, urge my colleague, Sen. (Prof.) Kamar, not to tire on this issue. I have read the Statement that you have placed before the House, and what you are seeking is just to make the House aware of the issues that are at fore. However, do not stop at that. Please, proceed and write even to the Liason Committee to advise on what Ministries are supposed to do when this House has made binding resolutions.

This House is not just a gathering of 67 men and women, but a gathering of Kenya. This is where the whole of Kenya meets to discuss issues that are of concern to them. If Kenya has spoken and said to the Ministry of Agriculture and Irrigation: “stop the monkey business that you are doing with maize,” then they need to stop. If somebody does not stop, the law allows us to take action against them and issue censures against the Cabinet Secretary (CS) and the Ministry officials who are not acting in accordance and spirit of what we have proposed as a House.

It is, therefore, my sincere hope and belief that we can perhaps take this issue to be one of those that we have prosecuted up to its logical conclusion. I am so excited because of what we were able to do. It points to the fact that the Senate has come alive and been able to do something we have struggled and not been able to do for a long time. We have been speaking so boldly about how the National Assembly is violating the law and aiding the Executive in entrenching impunity in our country. However, today we said enough is enough. We have not just idly walked for that distance to go before the High Court.

We are saying that the rule of law must be respected in this country. If anybody does not want to respect the rule of law, then the law must force them to respect it. Therefore, it is important that we stand up to all the bullies in the National Assembly and in the Executive. Let them know that this House is a creation of Kenyans.

Until such a time that Kenyans tell us that they want to organize their legislature in a way other than the bi-cameral nature within which it exists, we shall continue to exercise our work with military precision. We shall ensure that every law that concerns our counties is brought before this House where we will look at it with a keen eye of ensuring that -

(1)It entrenches devolution

(2)It protects the interest of Kenyans and not of those who have held this country captive and ensure that for every Government programme that is brought forth, they only look out for their profits.

Even this issue that we are debating right now about how much shall go to the counties, it is just about deal making. Believe me, if the people handling tenders at the counties were as powerful as the tenderpreneurs in the national Government we would be talking about Kshs700 billion going to the counties. However, because they cannot organize themselves to lobby and ensure that a particular State department has Kshs300 billion and another Kshs400 billion, that is why people are saying you just throw a paltry Kshs316 billion. How can Kshs316 billion be enough to our counties in a budget of Kshs3 trillion? It is insanity.

With those many remarks, I beg to support. Thank you.

**Sen. Mwaura:** Mr. Temporary, Speaker, Sir, one of the most confounding things that I grapple with every day in public service, is the fact that some people would rather make money when the people they are supposed to represent are suffering. They have no conscience whatsoever.

We hear stories of senior Government officials building houses in places like Karen and putting bullet-proof windows. These are individuals, who just the other day were in the streets with nothing to show for themselves, licking their wounds of defeat.

Today as we speak, we do not even know what we are as a country. Are we in a planned economy? Are we in a liberal economy that is controlled by forces of demand and supply? When you look at the issue of maize, this deficit is artificial and engineered. As we speak, I am sure that there is a maize vessel in Durban waiting for a go-ahead of the importation. It happened in 2010 when I was an advisor in the Office of the Prime Minister.

We hear stories about aflatoxin and people making huge profits out of the suffering of Kenyans. We cannot be in a situation where we say we are not going to have enough maize. This is not a natural calamity. The issue of the Big Four Agenda and food security is one of the key plans of the Jubilee administration.

When you see a Cabinet Secretary insisting that there must be importation, and also see the manipulation of the market to the point that 2 kilogrammes of maize flour is now selling at Kshs150; this is meant to create a public catharsis so that somebody gets a justification to become rich on the backs of Kenyans. It is despicable! It is unacceptable! This is something that is well calculated and it is not just within the Ministry of Agriculture. We have failed as a country to allow public service administration to take place. What is the role of agricultural economists?

If a country like China with a population of 1.4 billion which was suffering starvation during the days of Mao Zedong where only 440 kilogrammes of grain was to one person, today they are food sufficient. What about our country that has less than 50 million people? We have huge arable land across this Republic of Kenya. We are not in a dessert. However, there are some people who are making money out of the suffering of Kenyans.

Mr. Temporary Speaker, Sir, let me give you a personal example. I am not sure whether it was this year or last year. I received a call that there were some maize farmers

who had not been paid and needed to come and see me in my office. I did not object to that. In fact, they passed through a reverend. They came to my office and gave me a narration that was quite interesting.

They said that they have not been farming because of frustration for the past 17 years. Some of them told me that they supplied 5,000 bags and others 10,000 bags of maize. There were some few people who looked genuine. The moment I told them to give me the papers, they never returned in my office, and I never saw them again.

That tells you that there are many ‘tenderpreneurs’ who were paid, and the real farmers were never paid. That is a disincentive. What are we telling the Kenyan farmer when we say that there is a shortfall? These are some of the things that we need to speak openly about, and I am glad this Senate has made pronouncement on that.

I thank Sen. (Prof.) Kamar and the team that canvassed around the issue of the maize scandal. However, we cannot just talk and leave it there as if this is another talk shop. Just the way we said litigation must come to an end, such matters must also come to an end. We need to make a decision on that.

When a Cabinet Secretary in charge of Agriculture and Irrigation refuses to come to this House to respond to questions or does not have the decorum to give a substantive directive as to how he has been planning for this country, so that we do not end up in the current situation, then something is wrong.

Without saying much, I support this Statement. Let it not just be another report on top of the other Report we had on maize, because we have seen Kenyans suffering. One may say maize was imported from Mexico because it is staple food in this country. I agree that it should not just be a question of maize farmers, but also those who consume maize.

Mr. Temporary Speaker, Sir, just to reiterate and disabuse the notion, there are many maize farmers in central Kenya. There are big farms like Wangu Investment Company Limited of the late K.S.N Matiba in Laikipia, which is 12,000 acres. So, let us not imply that people from my great County of Kiambu only farm in baskets and backyards because of the concrete jungle that all of us live in, which are like dormitories.

I support.

**Sen. Omogeni:** Mr. Temporary Speaker, Sir, I also want to be on record in supporting the Statement by Sen. (Prof.) Kamar. I served in the *Ad Hoc* Committee that looked into the issues of maize. It is hard that we are addressing this issue this afternoon even before we take stock of whether the Cabinet Secretary (CS) for Agriculture and Irrigation, Hon. Kiunjuri, has done any implementation on the recommendations that were made by the Committee that looked into the issues around maize.

In this time and era, it is sad that year in, year out, the only solution the CS can think on the shortage of maize is to tell this country that maize will be imported from Mexico. When we looked into the level of aflatoxin contained in maize that was imported from Mexico, it was over 63 per cent. That poses a big risk to the population of this country.

The recommendation to the CS was to get homegrown solutions. He ought to have encouraged farmers to engage in quality farming, so that we can attain self-sufficiency in maize. The solution can never be that year in, year out, we should be looking to import maize from Mexico. I cannot understand why the CS does not want to

be proactive. It is high time we made an appeal to the President. If it is not working, then he should fix it. If Hon. Kiunjuri is unable to manage the Ministry of Agriculture and Irrigation, let him ship out. That is a very important docket because we are talking about food security in this country.

We even gave a proposal to the CS that he needed to come up with incentives to encourage more farmers to engage in farming and ensure seedlings of good quality are provided to the farmers. When we visited Nyamira County, we found seedlings that had been in the NCPB for the past six years. When farmers in Nyamira County planted them, they never grew.

The farmers reported that they went to the NCPB in Nyansiongo, picked the seedlings and went away. They did not even bother to convene a forum to apologise or talk about compensating farmers who had bought the seedlings and invested in buying fertilizer, but harvested nothing. You can imagine how casual the CS approaches these issues. Those are peasants or small-scale farmers who have invested money, but got nothing in return. It is the Government that supplied the seedlings through the NCPB. That means something is wrong.

Mr. Temporary Speaker, Sir, allow me to make a strong appeal to the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI), which are agencies that are supposed to investigate issues of corruption. There must be some cartels benefitting from some of these issues surrounding maize production. How do you allow importation of fertiliser, which instead of helping farmers to have more yields, kills the seedlings and the farmers end up with nothing?

I do not know of any country in the world that can fail to reward its own hardworking farmers. They farm their produce and at the end of the year, do not get paid. Is there any CS in this country who works for 12 months and is not paid? They are so insensitive to the plight of farmers, who depend on farming to pay school fees for their children and put food on the table, but are not paid.

It is sad that we are approaching the end of 2019 and farmers who supplied maize to the NCPB way back in 2017 have not been paid to date. How insensitive and cruel can our Government be to our farmers? Kenya is a country that depends on maize for food sustainability. Most households in this country consume maize.

Mr. Temporary Speaker, Sir, we even made recommendation that we do not want the idea of a CS waking up one day and announcing to the country that he or she wants maize imported. We proposed to the CS that we need regulations and mechanisms of ensuring that the market and business environment is free and fair to everybody. That way, it will not be a matter of some cartels waking up one day and telling us that there will be food shortage, and we need to import maize.

The question we should ask is why maize should be imported at a time when farmers are about to harvest their maize? Everybody can see malice. They want to do it in bad faith. The interest is profiteering and not ensuring that we have food security. They want to discourage the farmers so that next year we are told that there is shortage and a window is opened again for importation.

We are here to represent our people, and this is something what we should not allow. If we discourage our maize farmers, it will reach a time when we will have no

maize production in this country. I do not think that will be in the best interest of this country.

A time has come when we need to have a serious censure Motion against the CS for Agriculture and Irrigation. However, I commend Sen. (Prof.) Kamar for bringing this Statement. If the CS for Agriculture and Irrigation is listening or watching this debate, this should be a wake-up call to him. What is being put across is that there is inefficiency in the Ministry, and he is not fit for that job.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. (Prof.) Onger:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to also thank Sen. (Prof.) Kamar for bringing this Statement. Year in, year out, a Kenyan small-scale or large scale farmer faithfully tills land to produce food that can be put on the table for this country.

The population of this country has grown from 7 million in 1963 and we are now approaching 50 million Kenyans. The *Ad Hoc* Committee on Maize went about ensuring that all the issues that bedeviled the farmer were put on the table; when we went to Eldoret where we had a special session there. This farmer faithfully waits for the subsidies in fertilizer and other materials like seed to be put at strategic points, where they can come out, plough and plant.

I have witnessed in Kisii, Nyamira, Trans Nzoia and Uasin Gishu counties cases where people waited desperately for the subsidized fertilizer to arrive. However, it arrived when the rains had already gone. They struggled to take loans from the banks and small institutions. Some borrowed from shylocks to plant.

Regretfully, we are now being told that somebody has decided to import maize from Mexico. This is a very sad situation. If China and India can feed over 1.5 billion and 1.4 billion people respectively and have surplus for export, why can Kenya not do the same?

I am crying out for that small-scale farmer who has put all his or her investment in growing food for this country. However, instead of getting support from the Government that he or she supported faithfully, he or she is now getting disappointment galore.

Agriculture is a devolved function and, therefore, food security can only be realized if the farmer is motivated. We cannot continue with this cavalier way of doing things; that we want to import because we want to enrich a few cartels, who have strategically placed themselves in a place where they can bring in and dampen the market. There is still maize grains in *ghalas* or stores of farmers who have kept that maize there in the hope and expectation that the Government or the National Cereals and Produce Board (NCPB) would buy it. That has not happened.

Fortunately, we had some good rains. The little money farmers had or borrowed has invested again in growing the food, yet they are staring at the stuck reality that they may never be able to sell the current crop which is in the farms. It is only about one or two months.

I agree that any nation must be alive to the Strategic Grain Reserves. These Strategic Grain Reserves are arrived at after careful due diligence study of the available stocks of that particular grains, in this case maize. That is a matter that normally finds its way to the Cabinet, which expresses its decision through the Ministry of Agriculture and

Irrigation and the Strategic Grain Reserve Authority. This is so that the country is fully informed of the kind and level of the deficit they are likely to meet.

If there will be an importation in order to safeguard the interest of the farmer, the channels of that importation must also be clearly spelt out. We should not have a *carte blanche* and open cheque for that importation. This is because that has the effect of dampening the prices, causing more pain, agony and difficulties for the farmer. One of these days, they will pull out and this country will be permanently importing this important strategic grain that we need for our daily consumption.

Mr. Temporary Speaker, Sir, our children depend on this food and the vegetables that they grow on their farms. This is the only thing they have at the table. How can a person be so merciless to the extent that before they think about the population that voted them into power, they want to import two million bags of maize?

I do not blame the President. The CS that he has put in place must wake up to the reality that Kenyans are auditing them. This is why the Senate stands counted for auditing that kind of cavalier attitude of handling matters of such level and magnitude. We make a point and emphasise that strategic grain reserves are important. However, at the same time, any Government must take care of its citizens by preserving the farmers, because they are the only people who create a sustainable stock of any harvest that is available.

With those few remarks, I support.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. I rise to support the Statement by the distinguished Senator for Uasin Gishu County. This House pronounces itself through Motions and Acts of Parliament. Therefore, it behooves everyone who this House has directed to carry out a particular task to fulfill it without any delay.

Article 125 of the Constitution of Kenya gives this House, or any Committee of this House, powers to call for evidence. When I listened to my colleagues, and after I read the Statement by the distinguished Senator for Uasin Gishu County, I find that this is a problem that calls for sanctions. This is an issue that we cannot take lightly.

Our Standing Orders are clear. The CS was supposed to provide a report on the implementation of the Committee's Report. However, 60 days after, I am yet to see a report submitted by that CS. This begs the question: what is it that we do in this House? Do we come here to enjoy good allowances, use taxpayers' money, pronounce ourselves, and no one takes action? This is a serious offence of the rule of law. It is insubordination of the powers given to this House.

Mr. Temporary Speaker, Sir, we should not ask for any more report. If we are not able to come up with an implementation Committee to ensure that any pronouncements of this House are fully implemented to the letter, we should sit down and draft a legislation that will put heavy sanctions against those who are directed by this House to carry out certain things, to save this country.

If you read in the Press, the Committee of Agriculture in the 'lower House' established that farmers are currently hoarding more than 1.5 million bags in NCPB and farmers' grain storage. However, the millers will start to complain that the prices are up. I remember a time when we were paying Kshs86 for two kilogrammes of maize flour. However, it went to Kshs117. They should ask themselves why the prices are going up. It could be because of what we were discussing earlier on; the inflated prices of electricity because they use power to grind the corn. However, they continue to line the pockets of

all the corrupt cartels who have destroyed this economy by allowing them to import duty-free maize, yet this House had already pronounced itself and given recommendations. This is total disrespect of the rule of law.

Mr. Temporary Speaker, Sir, this is something that annoys me. When you look at statistics worldwide, the production of maize surpasses that of rice. All over the world, there is heavy production of maize. Why would Kenya be different? Sometimes we have challenges with our weather. However, this year, the Almighty God has been generous to us and our farmers have grown their crops.

It is about time to change our direction. We should not only ask for a Statement. In fact, I request my sister, through the Committee on Agriculture, Livestock and Fisheries and the powers given to it by Article 125 of this Constitution, to call for evidence that the CS for Agriculture and Irrigation implemented the recommendations of that Committee. If we do not follow that direction, we will come here, rant and talk, and nobody will give a hoot what we say.

Mr. Temporary Speaker, Sir, I will limit my submission and argument today to request my sister, the distinguished Senator for Uasin Gishu County, to apply the powers given to her Committee by the Constitution and call for evidence.

Finally, she should apply the Parliamentary Powers and Privileges Act. If the CS refuses to provide evidence that he implemented the recommendations of the Committee, she should penalize him so that people begin to take this House seriously. We pronounce ourselves through Motions and Bills which become Acts of Parliament, and they are binding for every citizen in this country.

Mr. Temporary Speaker, Sir, I support.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker Sir, for giving me this opportunity to commend Sen. (Prof) Kamar for coming up with this Statement. It is unfortunate that as a country we sign international laws and come into agreements to say that we will stand with our citizens, but when it comes to walking the talk, it is very difficult.

Kenya is one of the nations that ratified the Maputo Declaration that stated that 10 per cent of the national revenue would go to farming. When Kenya did that, it affirmed that it would support and protect its farmers. I want to say on the Floor of this House that a Petition came from farmers. We listened to the Petition and, thereafter, a taskforce was mandated to go to the counties and listen to the farmers. The taskforce went to the ground, listened to the farmers and came up with findings.

I just wonder whether the Cabinet Secretary got to interrogate the findings of the taskforce. The taskforce came up with empirical evidence and data that could not be challenged, concerning their feelings about what happened. The people recounted the sorrow and pain they went through when they had a lot of maize in the granary and it was not sold out. It is a callous move for the Cabinet Secretary to pronounce that maize should be imported into this country when our farmers on the ground are literally crying that they have a lot of maize in their granaries, and do not know where to take it. In fact, some maize is rotting in the granaries.

This is a very unfortunate move by the Cabinet Secretary. There is need for the Executive to come to this Senate and explain what informed their decision to import maize. As a Senate our core mandate is to represent the counties and their interests. If the

farmer is pinched, we are also pinched as a Senate. We want to play our role by ensuring that we protect our farmers. There is need for the Kenyan farmer to be protected.

It is unfortunate that the helpless farmer who we need to protect is not really being protected. There is need for us to ensure that the Cabinet Secretary comes to the Senate, listens to us and tells us why he released the statement. Maize is the staple food of Kenya and more than 85 per cent of the population consumes it. That should not be a license to import maize because a huge chunk of Kenyans also grow maize.

It is unfortunate that this House can just watch as farmers from other countries are motivated and inspired to grow their own maize. Once that maize is ready for harvesting, Kenya becomes an exit for buying it. It is a very unfortunate state of affairs. We are supposed to encourage our farmers, so that we have an exit for their products. It is ironic that farmers plant maize and have no exit for their produce, but we are still importing maize. As a country we should not do that. As the Senate we should not just watch this happening. We must shout at the top of our voices because the Kenyan farmer needs to be protected. It is our duty, as the Senate, to ensure that the Kenyan farmer is protected.

Mr. Temporary Speaker, Sir, you will find that most farmers rely on farming to get money to pay school fees for their children and buy medication. It is a source of income for our farmers. At the same time, farmers are investing a lot of their hard-earned money in farming. However, they get poor returns from their produce.

Even as I speak, there are some farmers who are discouraged from planting because of what happened last year. This is because they used a lot of money in planting, but there were poor returns for the work they did. It is time we decided, as the Senate, that we will encourage our farmers in all ways.

I support this Statement and encourage Sen. (Prof.) Kamar to ensure that the Cabinet Secretary comes here, so that we can interrogate him. We should also ensure that he gets the findings of the taskforce. That should inform him on how he should play his role as a Cabinet Secretary, in ensuring that he is serving Kenyans. The Cabinet Secretary should realize that he is in office for the sake of Kenyans. We must ensure that we represent Kenyans effectively in this House.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. (Dr.) Milgo:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to contribute to this contentious issue of maize. Maize is the staple food for many communities in this country. Many issues have been discussed regarding maize, but none of them have been addressed. The most recent one is the one that was shared by Sen. (Prof.) Kamar, who brought this Statement in the House.

It is unfortunate that for the last 120 days nobody has looked at the recommendations of the *Ad hoc* Committee. Before the *Ad hoc* Committee, there was a taskforce that went round to look at what was affecting maize farmers in this country. Unfortunately, all those reports are collecting dust in the shelves. It is unfortunate that the CS for Agriculture and Irrigation is talking of importing maize, yet the farmers in the breadbasket counties are crying that they do not have a place to take their maize.

Food security is one of the Big Four Agenda in our country, yet the CS has not put policies and regulations in place to ensure that this country is food secure. In the past, there was a subsidy for fertilisers to the farmers, but that is no longer there. Rather than provide fertiliser subsidy and good seeds to the farmers, the CS has declared that there is

no maize in this country and wants us to import it. The CS should be summoned to this House to tell us what is affecting his Ministry, because it seems that he wants to spend more money on importing maize.

As I speak, the farmers can no longer rely on maize. Maize has always been their source of food and financial stability. It has helped them take their children to school and buy basic necessities, but they cannot do that anymore. The farmers who have produced maize through thick and thin have been forced to supply a quarter of their produce to the NCPB. In fact, they are actually being told that they are not the actual producers of their maize. The CS should tell Kenyans if he is incapable of handling that docket. If that is the case, he should resign and allow somebody else to take over.

We have been challenging our unemployed youth to consider maize farming as a business. However, the youths who borrowed money to grow maize cannot return the same funds to the financing institutions. I am sure these are the youth who shall be blacklisted by the Credit Reference Bureau (CRB).

We have a lot of issues about maize, which is a challenge that Members of various Committees have been going round to try to address. I am sure that after a short while another taskforce will be formed to go round to find out what is happening.

It is only recently that we talked about the fall armyworms that will affect farmers. The Cabinet Secretary took a long time to respond to the farmers and assist them to get insecticides or provide agriculture extension officers to train them on how to use the necessary chemicals, to ensure maize is protected against the fall armyworms.

I challenge Sen. (Prof.) Kamar to look into the gaps and come up with a Bill. I know that we will continue spending money and going round talking about maize day in, day out, and nothing will happen. Somebody said that they will import maize from Mexico.

The reason we have many cases of cancer in this country could be as a result of importation of maize or foodstuffs that are Genetically Modified Organisms (GMOs). This is because we are not sure about them. There is a time the Government imported yellow maize. Yellow maize is supposed to be used as a feed for cows. However, we import anything because we are helpless. It is unfortunate that our farmers have a lot of maize, and soon they will harvest more, yet the Government plans to waste money on importation.

Mr. Temporary Speaker, with those few comments, I support this Statement and hope that it will be addressed as a matter of urgency.

**Sen. Wario:** Bw. Spika wa Muda, naunga mkono Taarifa ya Sen. (Prof.) Kamar. Ninakotoka kuna mashamba makubwa ambapo mahindi yanakuzwa kwa wingi kupitia unyunyizaji maji. Kuna Hola, Bura na Galana-Kulalu *irrigation schemes* ambazo zinapatikana katika Kaunti ya Tana Rive. Nashangaa sana kusikia kuwa Serikali ina mpango wa kuagiza mahindi kutoka ng'ambo. Sehemu nilizotaja zinatoshwa kutoa chakula cha kutosha watu wa Tana River na Kenya nzima.

Kwa nini tusikuze mahindi yetu hapa nchini badala ya kuagiza kutoka nje? Hilo ni swali ambalo tunafaa kujiuliza. Je, tuna upungufu gani? Tuna mito mikubwa ambayo ina maji kila wakati. Vile vile, tuna ardhi iliyo na rotuba.

Jambo la kushangaza ni kuwa watu waishio karibu na mashamba ya kunyunyiziwa maji ndio maskini zaidi. Serikali haikuwezesha watu kupanda mahindi

katika sehemu za unyunyiziaji mashamba maji. Mashamba yetu hayanyunyiziwi maji jinsi inavyostahili.

Ni kinaya kuwa Wizara ya Kilimo na Unyunyiziaji Maji haiwezi kusaidia watu wetu kupanda mahindi ili kupatikane chakula, kwa sababu nimeskia kuna mpango wa kuagiza chakula kutoka nchi nyingine. Tuna wataalamu, maji na ardhi bora ya kukuza mahindi.

Nilishangaa kusikia kuwa maghala yetu yamejaa mahindi, lakini Serikali bado inapanga kuagiza mahindi kutoka nje. Hayo ni mahindi ambayo hatujui yanapandwa vipi. Pengine huwekwa dawa ambazo hazijulikani. Ikiwa tuna ardhi na maji ya kutosha, kwa nini tunawacha watu wetu kuteseka?

Nafikiria tulienda na wewe kule Galana. Watu wa Galana ni maskini hohe hahe. Hata wamekatazwa kupeleka ng'ombe wao kunywa maji katika Mto Galana. Hii ni kwa sababu inasemekana kwamba sehemu hiyo ni ya *irrigation*. Imefanya watu wetu maskini na pia sisi hatuwezi kukipata chakula hicho.

Kwa sababu hiyo, mimi naunga mkono Taarifa ambayo imetolewa na Sen. (Prof.) Kamar ili tuweze kutengeneza mambo. Kuna swali muhimu ambalo tunaweza kujiuliza. Kwa hivyo, nataka kumuachia dakika kidogo Mwenyekiti wangu wa Kamati ya Kilimo, Mifugo na Uvuvi ambaye yuko hapa nyuma yangu.

Asante sana, Bw. Spika wa Muda.

**The Temporary Speaker** (Sen. Dr. Lelegwe): Finally, the Chairperson of the Committee on Agriculture, Livestock and Fisheries, Sen. Ndwiga.

**Sen. Ndwiga:** Mr. Temporary Speaker, Sir, there are so many issues that have been raised by our colleagues that will perhaps require more time than we have got at the moment. Be that as it may, first of all, I thank Sen. (Prof.) Kamar for raising this Statement. It is actually the second Statement. The first one came to the Committee.

We have been interrogating that Statement, and last week, I asked the Cabinet Secretary (CS) to come over and answer to the issues that were raised. Unfortunately, Sen. (Prof.) Kamar was not in the country, and we needed her. That is the tradition and practice of our Committee. When a Member raises an issue and we invite the CS, we require the Member to be there to interrogate and give guidance to the Committee on the issues raised.

Our Committee has enjoyed very cordial relations with the Ministry of Agriculture and Irrigation. Every time we invite the CS, he affords time or sends relevant people to come to the Committee. We have no issues. Most of our colleagues have said that we need to use the Standing Orders to summon and veto the CS. As the Chairperson of the Committee, I do not think that will be necessary. Most of the issues raised so far point to the inadequacies of the Ministry to support the farmers in certain areas.

Our colleagues have contributed and also raised very pertinent issues, the first one being the inadequacy of the budget for the Ministry of Agriculture and Irrigation. Part of the reason we walked to the Milimani Courts this morning is because we need more funding for our counties. Agriculture is 100 per cent devolved and we require ample or adequate funding for agriculture and agricultural activities at the grassroots.

As the Chairperson of the Committee on Agriculture, Livestock and Fisheries, I thank this House. Since the Report of the *Ad Hoc* Committee on Maize came out, a number of things have happened. I thank Sen. (Prof.) Kamar who led the *Ad Hoc*

Committee. This House has passed the Warehouse Receipts System Bill, which will shape the manner in which the markets behave as far as cereals are concerned. I hope that the Ministry will, in the near future, first of all, address the issue of why food in this country is more expensive than the neighbourhood.

This year, we have enjoyed the same rainfall as our neighbours. How come then that in the next two or so months, when all of us harvest maize, we will get cheaper maize from our neighbouring countries than we produce here? Those are some of the issues that we need to interrogate as the Senate.

One of the main reasons is that our farmers are not capacitated in time. They do not get the inputs they require on time. The last season, you remember that issues were raised in this House regarding the lateness of the fertilizer and its distribution to the farmers. It actually came late. Those are some of the issues that the Ministry of Agriculture and Irrigation need to look at.

As we point a finger at the Cabinet Secretary for Agriculture and Irrigation, I would want us to address ourselves to the counties. For us to be able to do that, we need to capacitate our county governments with funding, so that they can do all those things. Since we have given our county governments that ability through the Warehouse Receipt System Bill, I look forward to them bringing their own legislation on how they will regulate the warehouse receipt system.

Mr. Temporary Speaker, Sir, when we had public participation, I noted that very many finance institutions and business people are very keen to join this system. I do hope that this will be the end of the cry of the cereals farmers in this country, in terms of which warehouses they can store their produce and the kind of prices that they will get.

In conclusion, I would like to tell this House, categorically, that last week, the Ministry did inform my Committee that there would be no importation of maize. Even before they were summoned by the 'lower House', they had already told us that. Like I said earlier, we needed the Senator who originated the Statement, to interrogate the Statement and get the assurance of the CS.

As the Senate, we want to thank the Government for listening to the cries of Kenyans. We do not want a situation like we had in the last session where our own farmers had so much maize in their own stores, but were not paid after delivering maize to the NCPB. This time, I hope God is on our side because our farmers will be harvesting in the next two months.

Those of us in the business system know that if you want to import maize today, there is no way you can get it to the Port of Mombasa within the next two months. Even if you managed to do that, that maize would be more expensive than the locally produced maize.

Mr. Temporary Speaker, Sir, I am happy and want to assure the House and Prof. Kamar, that next week but one, we will still ask the Cabinet Secretary to come, so that we can follow through on the *Ad Hoc* Committee Report, for the future of production of maize in this country.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Thank you. The Statement is, therefore, committed to the Committee on Agriculture, Livestock and Fisheries.

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, it is now 6.30 p.m.; time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday 23<sup>rd</sup> July, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.